

ASBESTOS LITIGATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill addresses asbestos litigation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ recodifies Title 78B, Chapter 6, Part 20, Asbestos Bankruptcy Trust Claims Transparency Act, to Title 78B, Chapter 6, Part 24, Asbestos Litigation Requirements;
- ▶ requires certain disclosures after a complaint is filed in an asbestos action;
- ▶ addresses the dismissal of an action for failure to comply with a disclosure requirement;
- ▶ requires a prima facie showing of certain evidence in an asbestos action alleging a nonmalignant condition;
- ▶ establishes requirements for prima facie evidence in an asbestos action alleging a nonmalignant condition, including the disclosure of evidence at trial or to a jury;
- ▶ addresses the dismissal of an asbestos action when a plaintiff fails to make a prima facie showing;
- ▶ addresses the accrual of an asbestos action alleging a nonmalignant condition; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

30 None

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **78B-6-2402**, Utah Code Annotated 1953

34 **78B-6-2403**, Utah Code Annotated 1953

35 **78B-6-2404**, Utah Code Annotated 1953

36 RENUMBERS AND AMENDS:

37 **78B-6-2401**, (Renumbered from 78B-6-2003, as last amended by Laws of Utah 2018,
38 Chapter 39)

39 **78B-6-2405**, (Renumbered from 78B-6-2004, as enacted by Laws of Utah 2016,
40 Chapter 385)

41 **78B-6-2406**, (Renumbered from 78B-6-2007, as enacted by Laws of Utah 2016,
42 Chapter 385)

43 **78B-6-2407**, (Renumbered from 78B-6-2005, as enacted by Laws of Utah 2016,
44 Chapter 385)

45 **78B-6-2408**, (Renumbered from 78B-6-2009, as enacted by Laws of Utah 2016,
46 Chapter 385)

47 REPEALS:

48 **78B-6-2001**, as enacted by Laws of Utah 2016, Chapter 385

49 **78B-6-2002**, as enacted by Laws of Utah 2016, Chapter 385

50 **78B-6-2006**, as enacted by Laws of Utah 2016, Chapter 385

51 **78B-6-2008**, as enacted by Laws of Utah 2016, Chapter 385

52 **78B-6-2010**, as enacted by Laws of Utah 2016, Chapter 385

53

54 *Be it enacted by the Legislature of the state of Utah:*

55 Section 1. Section **78B-6-2401**, which is renumbered from Section 78B-6-2003 is
56 renumbered and amended to read:

57 **Part 24. Asbestos Litigation Requirements**

58 ~~[78B-6-2003]~~. 78B-6-2401. Definitions.

59 As used in this part:

60 (1) "AMA guides" means the edition of the American Medical Association's Guides to
61 the Evaluation of Permanent Impairment in effect at the time of the performance of an
62 examination or test on an exposed individual.

63 ~~[(1)]~~ (2) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos,
64 anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite,
65 asbestiform amphibole minerals, and any of these minerals that have been chemically treated or
66 altered, including all minerals defined as asbestos in 29 C.F.R. Sec. 1910 at the time the
67 asbestos action is filed.

68 (3) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by the
69 inhalation of asbestos fibers.

70 ~~[(2)]~~ (4) (a) "Asbestos action" means a claim for damages or other civil or equitable
71 relief presented in a civil action resulting from, based on, or related to:

72 (i) the health effects of exposure to asbestos, including:

73 (A) loss of consortium;

74 (B) wrongful death;

75 (C) mental or emotional injury;

76 (D) risk or fear of disease or other injury; and

77 (E) costs of medical monitoring or surveillance; and

78 (ii) any other derivative claim made by or on behalf of ~~[a person]~~ an individual
79 exposed to asbestos or a representative, spouse, parent, child, or other relative of that [person]
80 individual.

81 (b) "Asbestos action" does not include a claim for workers' compensation or veterans
82 benefits.

83 ~~[(3)]~~ (5) "Asbestos trust" means a:

84 (a) government-approved or court-approved trust that is intended to provide
85 compensation to claimants arising out of, based on, or related to the health effects of exposure

86 to asbestos or asbestos-containing products;

87 (b) qualified settlement fund that is intended to provide compensation to claimants
88 arising out of, based on, or related to the health effects of exposure to asbestos or
89 asbestos-containing products;

90 (c) compensation fund or claims facility created as a result of an administrative or legal
91 action that is intended to provide compensation to claimants arising out of, based on, or related
92 to the health effects of exposure to asbestos or asbestos-containing products;

93 (d) court-approved bankruptcy that is intended to provide compensation to claimants
94 arising out of, based on, or related to the health effects of exposure to asbestos or
95 asbestos-containing products; or

96 (e) plan of reorganization or trust pursuant to 11 U.S.C. Sec. 524(g) or 11 U.S.C. Sec.
97 1121(a) or other applicable provision of law that is intended to provide compensation to
98 claimants arising out of, based on, or related to the health effects of exposure to asbestos or
99 asbestos-containing products.

100 (6) "ATS testing standards" means the official technical statements from the American
101 Thoracic Society for pulmonary function testing in effect at the time of the performance of an
102 examination or test on an exposed individual.

103 (7) "Board-certified physician in internal medicine" means a licensed physician who is
104 certified by the American Board of Internal Medicine or the American Osteopathic Board of
105 Internal Medicine.

106 (8) "Board-certified physician in occupational medicine" means a licensed physician
107 who is certified in the specialty of:

108 (a) occupational medicine by the American Board of Preventative Medicine; or

109 (b) occupational and environmental medicine by the American Osteopathic Board of
110 Preventative Medicine.

111 (9) "Board-certified physician in pathology" means a licensed physician:

112 (a) who holds primary certification in anatomic pathology or clinical pathology from
113 the American Board of Pathology or the American Osteopathic Board of Pathology; and

114 (b) whose professional practice is principally in the field of pathology involving regular
115 evaluation of pathology materials obtained from surgical or postmortem specimens.

116 (10) "Board-certified physician in pulmonary medicine" means a licensed physician
117 who is certified in the specialty of pulmonary medicine by the American Board of Internal
118 Medicine or the American Osteopathic Board of Internal Medicine.

119 (11) "Certified B reader" means a physician who is certified as a B reader by the
120 National Institute for Occupational Safety and Health.

121 (12) "Chest x-ray" means a chest film taken in accordance with applicable state and
122 federal laws and taken in the posterior-anterior view.

123 (13) "Exposed individual" means an individual whose exposure to asbestos is the basis
124 for the asbestos action.

125 (14) "FEV1" means the maximal volume of air expelled in the first second during
126 performance of spirometry.

127 (15) "FEV1/FVC ratio" means the ratio that is calculated from FEV1 divided by FVC.

128 (16) "FVC" means the maximal volume of air expired with maximum effort from a
129 position of full inspiration.

130 (17) "ILO system" means the system for the classification of chest x-rays provided in
131 the International Labour Office's Guidelines for the Use of ILO International Classification of
132 Radiographs of Pneumoconioses in effect at the time of the performance of an examination or
133 test on an exposed individual.

134 (18) "Law firm" means a person that employs a lawyer.

135 (19) "Lawyer" means an individual who is authorized to provide legal services in any
136 state or territory of the United States.

137 (20) (a) "Nonmalignant condition" means a condition that may be caused by asbestos
138 other than a diagnosed cancer.

139 (b) "Nonmalignant condition" does not include asbestos-related lung cancer
140 accompanied by asbestosis.

141 (21) "Pathological evidence of asbestosis" means a statement by a board-certified

142 physician in pathology that more than one representative section of lung tissue demonstrates a
143 pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos
144 bodies and there is no other more likely explanation for the presence of the fibrosis.

145 [~~4~~] (22) "Plaintiff" means:

146 (a) the person bringing the asbestos action, including a personal representative if the
147 asbestos action is brought by an estate; or

148 (b) a conservator or next friend if the asbestos action is brought on behalf of a minor or
149 legally incapacitated individual.

150 (23) "Plethysmography" means the test for determining lung volume in which the
151 exposed individual is enclosed in a chamber equipped to measure pressure, flow, or volume
152 change.

153 (24) "Predicted lower limit of normal" means the fifth percentile of healthy populations
154 based on age, height, and gender as referenced in the AMA guides.

155 (25) "Pulmonary function testing" means spirometry, lung volume testing, and
156 diffusion capacity testing, including appropriate measurements, quality control data, and
157 graphs, that are performed in accordance with the methods of calibration and techniques
158 provided in the AMA guides and the ATS testing standards in effect at the time of the
159 performance of a test on an exposed individual.

160 (26) "Qualified physician" means a licensed physician who:

161 (a) is a board-certified physician in internal medicine, a board-certified physician in
162 occupational medicine, a board-certified physician in pathology, or a board-certified physician
163 in pulmonary medicine, as is appropriate to the diagnostic specialty in question;

164 (b) (i) conducted a physical examination of the exposed individual and took a detailed
165 occupational, exposure, medical, smoking, and social history from the exposed individual; or

166 (ii) if the exposed individual is deceased, reviewed the pathology material and took a
167 detailed history from the individual most knowledgeable about the information forming the
168 basis of the asbestos action;

169 (c) (i) treated the exposed individual and had a physician-patient relationship with the

170 exposed individual at the time of the physical examination; or

171 (ii) if the licensed physician is a board-certified physician in pathology, examined
172 tissue samples or pathological slides of the exposed individual;

173 (d) prepared or directly supervised the preparation and final review of a medical report
174 under this part; and

175 (e) has not relied on any examinations, tests, radiographs, reports, or opinions of a
176 doctor, clinic, laboratory, or testing company that performed an examination, test, radiograph,
177 or screening of the exposed individual in violation of a law, regulation, licensing requirement,
178 or medical ethics requirement of the state in which the examination, test, radiograph, or
179 screening of the exposed individual was conducted.

180 (27) "Radiological evidence of asbestosis" means a quality 1 or 2 chest x-ray showing
181 bilateral small, irregular opacities, classified by width as s, t, or u, that occur primarily in the
182 lower lung zones graded by a certified B reader as at least 1/0 on the ILO system.

183 (28) "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1
184 or 2 chest x-ray showing diffuse bilateral pleural thickening of at least b2 on the ILO system
185 and blunting of at least one costophrenic angle as classified by a certified B reader.

186 (29) "Spirometry" means a test of air capacity of the lung through a spirometer that
187 measures the volume of air inspired and expired.

188 (30) "Supporting test results" means a report by a certified B reader, x-ray
189 examinations, diagnostic imaging of the chest, pathology reports, pulmonary function testing,
190 and other tests, which are reviewed by the diagnosing physician or qualified physician in
191 reaching the physician's conclusions.

192 (31) "Sworn declaration" means the same as that term is defined in Section
193 [78B-18a-102](#).

194 (32) "Timed gas dilution" means a method for measuring total lung capacity in which
195 the individual breaths into a spirometer containing a known concentration of an inert and
196 insoluble gas for a specific time and the concentration of that inert and insoluble gas in the lung
197 is compared to the concentration of that type of gas in the spirometer.

198 (33) "Total lung capacity" means the volume of gas contained in the lungs at the end of
199 the maximal inspiration.

200 ~~[(5)]~~ (34) "Trust claims materials" means a final executed proof of claim and all other
201 documents and information related to a claim against an asbestos trust, including:

- 202 (a) claims forms and supplementary materials;
- 203 (b) affidavits;
- 204 (c) depositions and trial testimony;
- 205 (d) work history;
- 206 (e) medical and health records;
- 207 (f) documents reflecting the status of a claim against an asbestos trust; and
- 208 (g) all documents relating to the settlement of the trust claim if the trust claim has
209 settled.

210 ~~[(6)]~~ (35) "Trust governance documents" means all documents that relate to eligibility
211 and payment levels, including:

- 212 (a) claims payment matrices; and
- 213 (b) trust distribution procedures or plans for reorganization for an asbestos trust.

214 ~~[(7)]~~ (36) " Veterans benefits" means a program for benefits in connection with
215 military service administered by the United States Department of Veterans Affairs under
216 United States Code, Title 38, Veterans Benefits.

217 ~~[(8)]~~ (37) (a) "Workers' compensation" means a program administered by the United
218 States or a state to provide benefits, funded by a responsible employer or the employer's
219 insurance carrier, for occupational diseases or injuries or for disability or death caused by
220 occupational diseases or injuries.

221 (b) "Workers' compensation" includes the Longshore and Harbor Workers'
222 Compensation Act, 33 U.S.C. Sec. 901 et seq., and Federal Employees' Compensation Act, 5
223 U.S.C. Sec. 8101 et seq.

224 (c) "Workers' compensation" does not include the Federal Employers' Liability Act, 45
225 U.S.C. Sec. 51 et seq.

226 Section 2. Section **78B-6-2402** is enacted to read:

227 **78B-6-2402. Required disclosures by plaintiff within 21 days of filing asbestos**
228 **action.**

229 (1) Within 21 days after the day on which the first answer is filed in response to the
230 plaintiff's complaint in an asbestos action, the plaintiff shall provide all parties with a sworn
231 declaration stating the evidence providing the basis for each claim against each defendant,
232 including:

233 (a) the name, address, date of birth, marital status, occupation, smoking history, and
234 current and past employers and worksites of the exposed individual;

235 (b) the name and address of each individual who is knowledgeable about each
236 exposure to asbestos and the exposed individual's relationship to that individual;

237 (c) the manufacturer or seller and the specific name of each asbestos-containing
238 product, including any brand or trade name of that product, to which the exposed individual
239 was exposed to asbestos or the other individual was exposed to asbestos if the exposed
240 individual's exposure to asbestos was through another individual;

241 (d) the specific sites and the location at the sites that establish the direct connection
242 between the exposed individual, or the other individual if the exposed individual's exposure to
243 asbestos was through another individual, and each defendant;

244 (e) the beginning and ending dates of each exposure and the frequency of each
245 exposure for the exposed individual or the other individual if the exposed individual's exposure
246 to asbestos was through another individual;

247 (f) the condition that is alleged to have been caused by exposure to asbestos; and

248 (g) any supporting documentation relating to the information required under this

249 Subsection (1).

250 (2) The sworn declaration under Subsection (1) is in addition to the disclosures
251 required under Sections [78B-6-2403](#) and [78B-6-2405](#).

252 (3) Except as provided in Subsection (4), on a motion by a defendant in an asbestos
253 action, the court shall dismiss a plaintiff's asbestos claim without prejudice:

254 (a) against a defendant if the defendant's asbestos-containing product or site is not
255 specifically identified in the sworn declaration under Subsection (1); or

256 (b) against all defendants if the plaintiff fails to comply with Subsection (1).

257 (4) The court may not dismiss a plaintiff's asbestos claim under Subsection (3) upon a
258 showing of good cause by the plaintiff.

259 Section 3. Section **78B-6-2403** is enacted to read:

260 **78B-6-2403. Requirements for asbestos action alleging nonmalignant condition --**
261 **Evidence.**

262 (1) Within 90 days after the day on which the plaintiff files the complaint in an
263 asbestos action alleging a nonmalignant condition, the plaintiff shall file a detailed narrative
264 medical report and diagnosis, signed under oath by a qualified physician and accompanied by
265 supporting test results, constituting prima facie evidence that the exposed individual has a
266 physical impairment for which exposure to asbestos was a substantial contributing factor.

267 (2) A defendant shall have a reasonable opportunity before trial to challenge the
268 adequacy of the prima facie evidence required under this section.

269 (3) A court shall dismiss an asbestos action without prejudice upon a finding that the
270 plaintiff failed to make the prima facie showing required by this section.

271 (4) To make a prima facie showing under Subsection (1), the detailed narrative medical
272 report and diagnosis shall include:

273 (a) (i) radiological evidence of asbestosis or pathological evidence of asbestosis;

274 (ii) radiological evidence of diffuse bilateral pleural thickening; or

275 (iii) a high-resolution computed tomography scan showing evidence of asbestosis or
276 diffuse pleural thickening;

277 (b) a detailed occupational and exposure history from the exposed individual, or the
278 individual most knowledgeable about the exposed individual's exposure to asbestos if the
279 exposed individual is deceased, that includes:

280 (i) the exposed individual's principal places of employment;

281 (ii) the exposed individual's exposure to airborne contaminants; and

282 (iii) whether the exposed individual's principal places of employment involved any
283 exposure to airborne contaminants, including asbestos fibers or other disease-causing dusts or
284 fumes that may cause a physical impairment and the nature, duration, and level of that
285 exposure;

286 (c) a detailed medical, social, and smoking history from the exposed individual, or the
287 individual most knowledgeable about the exposed individual's exposure to asbestos if the
288 exposed individual is deceased, that includes a thorough review of the past and present medical
289 problems of the exposed individual and the likely cause of the medical problems;

290 (d) evidence verifying that at least 15 years have passed between the exposed
291 individual's date of first exposure to asbestos and the date of diagnosis;

292 (e) evidence that the exposed individual has a permanent respiratory impairment rating
293 of at least class 2 as defined by and evaluated in accordance with the AMA guides;

294 (f) evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic
295 obstructive pulmonary disease, is a substantial factor to the exposed individual's physical
296 impairment based on a determination that the exposed individual has:

297 (i) FVC below the predicted lower limit of normal and a FEV1/FVC ratio, using actual
298 values, equal to or above the predicted lower limit of normal;

299 (ii) total lung capacity, by plethysmography or timed gas dilution, below the predicted
300 lower limit of normal; or

301 (iii) a chest x-ray showing bilateral small, irregular opacities, classified by width as s, t,
302 or u, and graded by a certified B reader as at least 2/1 on the ILO system; and

303 (g) a statement from the qualified physician that exposure to asbestos was a substantial
304 contributing factor to the exposed individual's physical impairment and was likely not the result
305 of any other cause.

306 (5) A statement by the qualified physician that the exposed individual's physical
307 impairment is consistent with, or compatible with, an exposure to asbestos, or words to that
308 effect, does not satisfy the requirements under Subsection (4)(g).

309 (6) Evidence relating to the prima facie showing under this section:

310 (a) shall comply with the quality controls, equipment requirements, methods of
311 calibration, and techniques provided in the AMA guides and ATS testing standards;

312 (b) may not be based on testing or examination that violates a law, regulation, licensing
313 requirement, or medical ethics requirement of the state in which the test or examination was
314 conducted;

315 (c) may not be obtained under the condition that the plaintiff retains the services of the
316 lawyer or law firm sponsoring the examination, test, or screening;

317 (d) does not create a presumption that the exposed individual has an asbestos-related
318 injury or impairment; and

319 (e) is not conclusive as to the liability of any defendant.

320 (7) A party in an asbestos action may not offer evidence at trial regarding, and the jury
321 may not be informed of:

322 (a) the grant or denial of a motion to dismiss an asbestos action under this section; or

323 (b) the requirements of a prima facie showing under this section.

324 (8) (a) Except as provided in Subsection (8)(b), a plaintiff may not commence
325 discovery against any defendant in an asbestos action until a court enters an order determining
326 that the plaintiff has established a prima facie showing under this section.

327 (b) The parties to an asbestos action may conduct discovery in regard to establishing or
328 challenging a prima facie showing under this section.

329 Section 4. Section **78B-6-2404** is enacted to read:

330 **78B-6-2404. Accrual of action alleging nonmalignant condition.**

331 Notwithstanding the requirements of Section [78B-2-117](#), the statute of limitations for
332 an asbestos action alleging a nonmalignant condition that is not time barred on or before May
333 3, 2023, may not begin to run until the earlier of the day on which:

334 (1) the exposed individual is diagnosed with a physical impairment that meets the
335 prima facie evidence requirements of Section [78B-6-2403](#);

336 (2) the exposed individual discovered facts that would have led a reasonable individual
337 to obtain a diagnosis with respect to the existence of a physical impairment from exposure to

338 asbestos that would have met the prima facie evidence requirements of Section 78B-6-2403; or
339 (3) the exposed individual dies.

340 Section 5. Section **78B-6-2405**, which is renumbered from Section 78B-6-2004 is
341 renumbered and amended to read:

342 ~~[78B-6-2004].~~ **78B-6-2405. Required disclosures by plaintiff in asbestos**
343 **action within 120 days of trial.**

344 (1) For each asbestos action filed in this state, the plaintiff shall provide all parties with
345 a sworn ~~[statement]~~ declaration identifying all asbestos trust claims that have been filed by the
346 plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related
347 conditions other than those that are the basis for the asbestos action or that potentially could be
348 filed by the plaintiff against an asbestos trust.

349 ~~[(a)]~~ (2) The sworn ~~[statement]~~ declaration shall be provided no later than 120 days
350 prior to the date set for trial for the asbestos action.

351 ~~[(b)]~~ (3) For each asbestos trust claim or potential asbestos trust claim identified in the
352 sworn ~~[statement, the statement]~~ declaration, the sworn declaration shall include:

353 (a) the name, address and contact information for the asbestos trust^[-];

354 (b) the amount claimed or to be claimed by the plaintiff^[-];

355 (c) the date the plaintiff filed the claim^[-];

356 (d) the disposition of the claim; and

357 (e) whether there has been a request to defer, delay, suspend, or toll the claim.

358 ~~[(e)]~~ (4) The sworn ~~[statement]~~ declaration shall include an attestation from the
359 plaintiff, under penalties of perjury, that the sworn ~~[statement]~~ declaration is complete and
360 based on a good faith investigation of all potential claims against asbestos trusts.

361 ~~[(2)]~~ (5) The plaintiff shall make available to all parties all trust claims materials for
362 each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's
363 behalf against an asbestos trust, including any asbestos-related disease.

364 ~~[(3)]~~ (6) The plaintiff shall supplement the information and materials provided
365 pursuant to this section within 90 days after the day on which the plaintiff files an additional

366 asbestos trust claim, supplements an existing asbestos trust claim, or receives additional
367 information or materials related to any claim or potential claim against an asbestos trust.

368 ~~[(4)]~~ (7) Failure by the plaintiff to make available to all parties all trust claims
369 materials as required by this part shall constitute grounds for the court to extend the trial date in
370 an asbestos action.

371 (8) (a) A court shall stay an asbestos action if the court finds that the plaintiff has failed
372 to make the disclosures required by this section within the time period described in Subsection
373 (2).

374 (b) If a plaintiff identifies a potential asbestos trust claim in the disclosures required by
375 this section, the court may stay the asbestos action until the plaintiff files the asbestos trust
376 claim and provides all parties with all trust claims materials for the asbestos trust claim.

377 Section 6. Section **78B-6-2406**, which is renumbered from Section 78B-6-2007 is
378 renumbered and amended to read:

379 ~~[78B-6-2007].~~ **78B-6-2406. Identification of additional or alternative**
380 **asbestos trusts by defendant before trial.**

381 (1) Not less than 90 days before trial, if a defendant identifies an asbestos trust claim
382 not previously identified by the plaintiff that the defendant reasonably believes the plaintiff can
383 file, the defendant shall meet and confer with the plaintiff to discuss why the defendant
384 believes the plaintiff has an additional asbestos trust claim.

385 (2) The defendant may move the court for an order to require the plaintiff to file the
386 asbestos trust claim after the meeting under Subsection (1).

387 (3) The defendant shall produce or describe the documentation [it] that the defendant
388 possesses or is aware of in support of the motion under Subsection (2).

389 ~~[(2)]~~ (4) Within 10 days ~~[of receiving]~~ after the day on which the plaintiff receives the
390 defendant's motion under Subsection [(1)] (2), the plaintiff shall[;] for each asbestos trust claim
391 identified by the defendant[; do one of the following]:

392 (a) file the asbestos trust claim;

393 (b) file a written response with the court setting forth the reasons why there is

394 insufficient evidence for the plaintiff to file the asbestos trust claim; or

395 (c) file a written response with the court requesting a determination that the plaintiff's
396 expenses or ~~[attorney's]~~ the plaintiff's attorney fees and expenses to prepare and file the
397 asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably
398 anticipated recovery from the trust.

399 ~~[(3)]~~ (5) (a) If the court determines that there is a sufficient basis for the plaintiff to file
400 the asbestos trust claim identified by the defendant, the court shall:

401 (i) order the plaintiff to file the asbestos trust claim; and ~~[shall]~~

402 (ii) stay the asbestos action until the plaintiff files the asbestos trust claim and provides
403 all parties with all trust claims materials no later than 30 days before trial.

404 (b) If the court determines that the plaintiff's expenses or ~~[attorney's]~~ the plaintiff's
405 attorney fees and expenses to prepare and file the asbestos trust claim identified in the
406 defendant's motion exceed the plaintiff's reasonably anticipated recovery from the asbestos
407 trust, the court shall stay the asbestos action until the plaintiff files with the court and provides
408 all parties with a verified statement of the plaintiff's history of exposure, usage, or other
409 connection to asbestos covered by the asbestos trust.

410 Section 7. Section **78B-6-2407**, which is renumbered from Section 78B-6-2005 is
411 renumbered and amended to read:

412 ~~[78B-6-2005]~~. **78B-6-2407. Discovery of materials and documents for**
413 **asbestos trust claim -- Use of asbestos trust materials.**

414 (1) Trust claims materials and trust governance documents are presumed to be relevant
415 and authentic and are admissible in evidence.

416 (2) Claims of privilege may not apply to any trust claims materials or trust governance
417 documents.

418 ~~[(2)]~~ (3) A defendant in an asbestos action may seek discovery from an asbestos trust.

419 (4) The plaintiff may not claim privilege or confidentiality to bar discovery and shall
420 provide consent or other expression of permission that may be required by the asbestos trust to
421 release information and materials sought by a defendant.

422 (5) If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is
423 resolved, the filing of the asbestos trust claim may be considered as relevant and admissible
424 evidence.

425 Section 8. Section **78B-6-2408**, which is renumbered from Section 78B-6-2009 is
426 renumbered and amended to read:

427 ~~[78B-6-2009].~~ **78B-6-2408. Failure to provide information -- Sanctions.**

428 A plaintiff who fails to provide all of the information required under ~~[this part]~~ Section
429 78B-6-2405, 78B-6-2406, or 78B-6-2407, is subject to sanctions as provided in the Utah Rules
430 of Civil Procedure and any other relief for the defendants that the court considers just and
431 proper.

432 Section 9. **Repealer.**

433 This bill repeals:

434 Section **78B-6-2001, Title.**

435 Section **78B-6-2002, Legislative findings -- Purpose.**

436 Section **78B-6-2006, Scheduling trial -- Stay of action.**

437 Section **78B-6-2008, Valuation of asbestos trust claims.**

438 Section **78B-6-2010, Application.**