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MEMORANDUM

To: Senate Committee on Judiciary

From: Jason Thompson, Senior Assistant Revisor of Statutes

Date: March 8, 2018

Subject: Bill Brief for HB 2457, as amended by House Committee

HB 2457 enacts the asbestos trust claims transparency act.

Section 1 names the act and section 2 provides for definitions to be used throughout the act. The bill applies to an asbestos claim, defined in K.S.A. 60-4901 as “any claim for damages, losses, indemnification, contribution or other relief arising out of, based on, or in any way related to inhalation of, exposure to, ingestion of, or contact with asbestos.” The other definition of note is “asbestos trust” on page 1, in lines 12 through 18.

Section 3, as amended, provides that no later than 30 days prior to the date the court establishes for the completion of all fact discovery, the plaintiff shall: (1) Conduct an investigation and file all asbestos trust claims; (2) provide the court and parties with a sworn statement indicating that the investigation has been conducted and all trust claims have been completed and filed; (3) provide all parties with all trust claim materials; and (4) produce all trust claim materials submitted by another individual, if the plaintiff’s trust claim is based on exposure through another individual. This section also provides that the plaintiff has a continuing duty to supplement the information. This section, as proposed, would have allowed the court to dismiss the asbestos claim if the plaintiff failed to comply with this section, but the House committee removed that provision.

Section 4, as amended, provides that no later than the date the court establishes for the completion of all fact discovery, a defendant may file a motion identifying the asbestos trust claims the defendant believes the plaintiff can file. If the defendant files this motion, within 10 days after receiving it, the plaintiff must: (1) File the trust claims; (2) file a written response with the court indicating why there is insufficient evidence to file the trust claims; or (3) file a written response with the court requesting a determination that the cost to file the trust claims exceeds the plaintiff’s reasonably anticipated recovery. If the court finds a sufficient basis for the plaintiff to file a trust

claim, the court shall stay the asbestos claim until the plaintiff files the trust claim and produces the required documents. If the court determines that the cost of submitting the trust claim exceeds the plaintiff's reasonably anticipated recovery, the plaintiff shall file a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by that asbestos trust within 30 days of the court's determination. This section, as proposed, also would have provided that an asbestos claim may not be set for trial until at least 60 days after the plaintiff provides the required documentation, but the House committee removed that provision.

Section 5 provides that trust claim materials are presumed to be relevant and authentic and are admissible. It also provides that a defendant may seek discovery from an asbestos trust and the plaintiff may not claim privilege or confidentiality to bar discovery. This section, as proposed, also would have provided that trust claim materials are sufficient to support certain jury findings, but the House committee removed that provision.

Section 6 provides that if the plaintiff files an asbestos trust claim after obtaining a judgment in an asbestos claim, and that asbestos trust was in existence at the time the plaintiff obtained the judgment, the trial court has jurisdiction to reopen the judgment and adjust it. This motion must be made within a reasonable time and not more than one year after the judgment in the asbestos claim was entered.

Finally, Section 7 provides that the act applies to all asbestos claims filed on or after July 1, 2018. This section, as proposed, would have provided that the act applies to any pending asbestos claims in which trial has not commenced by July 1, 2018, but the House committee removed that provision.