

SENATE BILL No. 73

By Committee on Judiciary

1-24

1 AN ACT enacting the asbestos bankruptcy trust claims transparency act;
2 providing for disclosures regarding asbestos bankruptcy trust claims in
3 civil asbestos actions.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. Sections 1 through 7, and amendments thereto, may be
7 cited as the asbestos bankruptcy trust claims transparency act.

8 Sec. 2. The following definitions apply to this act:

9 (a) "Asbestos" means chrysotile, amosite, crocidolite, tremolite
10 asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite,
11 asbestiform richterite, asbestiform amphibole minerals, and any of these
12 minerals that have been chemically treated or altered, including all
13 minerals defined as asbestos in 29 C.F.R. § 1910 at the time the asbestos
14 action is filed.

15 (b) "Asbestos action" means a claim for damages or other civil or
16 equitable relief presented in a civil action arising out of, based on, or
17 related to the health effects of exposure to asbestos, including loss of
18 consortium, wrongful death, mental or emotional injury, risk or fear of
19 disease or other injury, costs of medical monitoring or surveillance, and
20 any other derivative claim made by or on behalf of a person exposed to
21 asbestos or a representative, spouse, parent, child or other relative of that
22 person.

23 (c) "Asbestos trust" means 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-approved
26 bankruptcy, or pursuant to 11 U.S.C. § 524(g) or 11 U.S.C. § 1121(a) or
27 other applicable provision of law, that is intended to provide compensation
28 to claimants arising out of, based on, or related to the health effects of
29 exposure to asbestos.

30 (d) "Plaintiff" means the person bringing the asbestos action,
31 including a personal representative if the asbestos action is brought by an
32 estate, or a conservator or next friend if the asbestos action is brought on
33 behalf of a minor or legally incapacitated individual.

34 (e) "Trust claims materials" means a final executed proof of claim
35 and all other documents and information related to a claim against an
36 asbestos trust, including claims forms and supplementary materials,

1 affidavits, depositions and trial testimony, work history, and medical and
2 health records, documents reflecting the status of a claim against an
3 asbestos trust, and if the trust claim has settled, all documents relating to
4 the settlement of the trust claim.

5 (f) "Trust governance documents" means all documents that relate to
6 eligibility and payment levels, including claims payment matrices, trust
7 distribution procedures, or plans for reorganization, for an asbestos trust.

8 Sec. 3. (a) Within 30 days after an asbestos action is filed, or within
9 30 days after the effective date of this act, whichever is later, the plaintiff
10 shall do all of the following:

11 (1) Provide the court and parties with a sworn statement signed by the
12 plaintiff and plaintiff's counsel, under penalties of perjury, indicating that
13 an investigation of all asbestos trust claims has been conducted and that all
14 asbestos trust claims that can be made by the plaintiff or any person on the
15 plaintiff's behalf have been filed. The sworn statement must indicate
16 whether there has been a request to defer, delay, suspend or toll any
17 asbestos trust claim, and provide the disposition of each asbestos trust
18 claim.

19 (2) Provide all parties with all trust claims materials, including trust
20 claims materials that relate to conditions other than those that are the basis
21 for the asbestos action and including all trust claims materials from all law
22 firms connected to the plaintiff in relation to exposure to asbestos,
23 including anyone at a law firm involved in the asbestos action, any
24 referring law firm, and any other firm that has filed an asbestos trust claim
25 for the plaintiff or on the plaintiff's behalf.

26 (3) If the plaintiff's asbestos trust claim is based on exposure to
27 asbestos through another individual, the plaintiff shall produce all trust
28 claims materials submitted by the other individual to any asbestos trusts if
29 the materials are available to the plaintiff or the plaintiff's counsel.

30 (b) The plaintiff shall supplement the information and materials
31 required under subsection (a) within 30 days after the plaintiff or a person
32 on the plaintiff's behalf supplements an existing asbestos trust claim,
33 receives additional information or materials related to an asbestos trust
34 claim, or files an additional asbestos trust claim.

35 (c) The court may dismiss the asbestos action if the plaintiff fails to
36 comply with this section.

37 (d) An asbestos action may not be set for trial until at least 180 days
38 after the requirements of subsection (a) are met.

39 Sec. 4. (a) A defendant may file a motion requesting a stay of the
40 proceedings on or before the later of the 60th day before the date trial in the
41 action is set to commence or the 15th day after the defendant first obtains
42 information that could support additional trust claims by the plaintiff. The
43 motion shall identify the asbestos trust claims the defendant believes the

1 plaintiff can file and include information supporting the asbestos trust
2 claims.

3 (b) Within 10 days of receiving the defendant's motion, the plaintiff
4 shall:

5 (1) File the asbestos trust claims;

6 (2) file a written response with the court stating why there is
7 insufficient evidence for the plaintiff to file the asbestos trust claims; or

8 (3) file a written response with the court requesting a determination
9 that the cost to file the asbestos trust claims exceeds the plaintiff's
10 reasonably anticipated recovery.

11 (c) (1) If the court determines that there is a sufficient basis for the
12 plaintiff to file an asbestos trust claim identified in the motion to stay, the
13 court shall stay the asbestos action until the plaintiff files the asbestos trust
14 claim and produces all related trust claims materials.

15 (2) If the court determines that the cost of submitting an asbestos trust
16 claim exceeds the plaintiff's reasonably anticipated recovery, the court
17 shall stay the asbestos action until the plaintiff files with the court and
18 provides all parties with a verified statement of the plaintiff's history of
19 exposure, usage or other connection to asbestos covered by that asbestos
20 trust.

21 (d) An asbestos action may not be set for trial until at least 60 days
22 after the plaintiff provides the documentation required by this section.

23 (e) Not less than 30 days before trial in an asbestos action, the court
24 shall enter into the record a document that identifies every asbestos trust
25 claim made by the plaintiff or on the plaintiff's behalf.

26 Sec. 5. (a) Trust claims materials and trust governance documents are
27 presumed to be relevant and authentic, and are admissible in evidence in
28 an asbestos action. A claim of privilege does not apply to any trust claims
29 materials or trust governance documents.

30 (b) A defendant in an asbestos action may seek discovery from an
31 asbestos trust. The plaintiff may not claim privilege or confidentiality to
32 bar discovery and shall provide consent or other expression of permission
33 that may be required by the asbestos trust to release information and
34 materials sought by a defendant.

35 (c) Trust claim materials that are sufficient to entitle a claim to
36 consideration for payment under the applicable trust governance
37 documents may be sufficient to support a jury finding that the plaintiff
38 may have been exposed to products for which the trust was established to
39 provide compensation and that, under applicable law, such exposure may
40 be a substantial contributing factor in causing the plaintiff's injury that is at
41 issue in the asbestos action.

42 Sec. 6. (a) On the motion of a defendant or judgment debtor seeking
43 sanctions or other relief in an asbestos action, the court may impose any

1 sanction provided by court rule or a law of this state, including, but not
2 limited to, vacating a judgment rendered in the action, for a plaintiff's
3 failure to comply with the disclosure requirements of this act.

4 (b) If the plaintiff or a person on the plaintiff's behalf files an asbestos
5 trust claim after the plaintiff obtains a judgment in an asbestos action, and
6 that asbestos trust was in existence at the time the plaintiff obtained the
7 judgment, the trial court, on motion by a defendant or judgment debtor
8 seeking sanctions or other relief, has jurisdiction to reopen the judgment in
9 the asbestos action and adjust the judgment by the amount of any
10 subsequent asbestos trust payments obtained by the plaintiff and order any
11 other relief to the parties that the court considers just and proper.

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

15 Sec. 7. (a) This act shall apply to all asbestos actions filed on or after
16 July 1, 2017. The act shall also apply to any pending asbestos actions in
17 which trial has not commenced as of July 1, 2017.

18 (b) This act may only be applied prospectively if the application of a
19 provision in this act would unconstitutionally affect a vested right.

20 Sec. 8. This act shall take effect and be in force from and after its
21 publication in the statute book.