

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 73

As Recommended by Senate Committee on
Judiciary

Brief*

SB 73 would enact the Asbestos Bankruptcy Trust Claims Transparency Act (Act), which would require plaintiffs to provide certain statements and materials within 30 days of filing an asbestos action or within 30 days after the effective date of the Act. The bill would define “asbestos action” to mean a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos and 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. Specifically, plaintiffs would be required to provide a sworn statement indicating an investigation of all asbestos trust claims has been conducted and all asbestos trust claims that can be made by the plaintiff have been filed, as well as all trust claims materials.

The bill would also require plaintiffs to supplement the information and materials within 30 days after the plaintiff, or a person on the plaintiff’s behalf, supplements an existing asbestos trust claim, receives additional information or materials related to such a claim, or files an additional asbestos trust claim. If those requirements are met, the bill specifies the action could not be set for trial for at least 180 days. If the requirements are not met, the court could dismiss the action.

The bill would outline circumstances under which a defendant could file and the court could grant a motion for stay. Additionally, the bill would establish evidentiary

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

standards for asbestos actions, allow a court to impose sanctions and reopen judgments in some circumstances, and require defendants and judgment debtors to act within a year of when a judgment was entered.

The bill would be applicable to all asbestos actions filed on or after July 1, 2017, and any pending action in which a trial has not commenced as of that date. The bill could also be applied prospectively if the application of a provision in the Act would unconstitutionally affect a vested right.

Background

The bill was requested by the Kansas Chamber. In the Senate Committee on Judiciary hearing, representatives of the Kansas Chamber and the U.S. Chamber Institute for Legal Reform appeared in support of the bill, explaining the bill would provide clear guidelines for this specialized area of litigation. Representatives of Americans for Prosperity, the Kansas Association of Property and Casualty Insurance Companies, and the National Association of Mutual Insurance Companies provided written-only testimony in support of the bill. A representative of the Kansas Trial Lawyers Association appeared as an opponent, stating that in creating unique procedural exceptions that delay claims, the bill would further reduce the accountability of asbestos companies to Kansans. Additionally, the representative indicated there has not been a flood of litigation in Kansas that would justify the need for these specific procedures to be in place. An attorney who represents victims of asbestos exposure and representatives of the American Federation of Labor and Congress of Industrial Organizations and the Military Order of the Purple Heart submitted written-only opponent testimony.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates enactment of the bill could increase Judicial Branch expenditures from additional staff time spent conducting and processing asbestos cases; however, a precise impact could not be given.