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3 HOUSE COMMERCE AND SMALL BUSINESS COMMITTEE SUBSTITUTE FOR
4 HB100

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9 SYNOPSIS: This bill would create the Asbestos Exposure
10 Transparency Act.

11 This bill would require a plaintiff in an
12 asbestos action to file a sworn statement
13 disclosing information regarding the plaintiff's
14 exposure to asbestos or, alternatively, file
15 available asbestos trust claims and produce all
16 trust claims materials before trial.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to asbestos trust claims; to add Article
23 35A, commencing with Section 6-5-690, to Chapter 5 of Title 6
24 of the Code of Alabama 1975, to create the Asbestos Exposure
25 Transparency Act; to require a plaintiff in an asbestos action
26 to file a sworn statement disclosing information regarding the
27 plaintiff's exposure to asbestos or, alternatively, file

1 available asbestos trust claims and produce all trust claims
2 materials before trial.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Article 35A, commencing with Section
5 6-5-690, is added to Chapter 5 of Title 6 of the Code of
6 Alabama 1975, to read as follows:

7 §6-5-690.

8 This act shall be known and may be cited as the
9 Asbestos Exposure Transparency Act.

10 §6-5-691. Definitions.

11 For the purposes of this article, the following
12 terms shall have the following meanings:

13 (1) ASBESTOS ACTION. A civil action arising out of,
14 based on, or related to the health effects of exposure to
15 asbestos and any derivative claim made by or on behalf of a
16 person exposed to asbestos or a representative, spouse,
17 parent, child, or other relative of that person. The term
18 asbestos action does not include claims alleging ovarian
19 cancer.

20 (2) ASBESTOS TRUST. A government-approved or
21 court-approved trust, qualified settlement fund, compensation
22 fund, or claims facility that is created as a result of an
23 administrative or legal action, a court-approved bankruptcy,
24 pursuant to 11 U.S.C. §524(g), 11 U.S.C. §1121(a), or other
25 applicable provision of law, that is intended, in whole or in
26 part, to provide compensation to claimants arising out of,

1 based on, or related to the health effects of exposure to
2 asbestos.

3 (3) TRUST CLAIM MATERIALS. A final executed proof of
4 claim and all documents and information submitted to or
5 received from an asbestos trust, including claim forms and
6 supplementary materials, affidavits, medical and health
7 records, depositions and trial testimony of the plaintiff and
8 others knowledgeable about the plaintiff's exposure history,
9 work history, exposure allegations, all documents that reflect
10 the status of a claim against an asbestos trust, and, if the
11 trust claim has been resolved.

12 (4) TRUST GOVERNANCE DOCUMENTS. All documents that
13 relate to eligibility and payment levels, including claims
14 payment matrices, trust distribution procedures, or plans for
15 reorganization, for an asbestos trust.

16 §6-5-692. Required disclosures by plaintiff.

17 (a) Subject to Section 6-5-693, within 90 days after
18 a plaintiff files an asbestos action, the plaintiff shall do
19 all of the following:

20 (1) Provide all parties with an affidavit, signed
21 under oath by the plaintiff, stating all of the following:

22 a. The plaintiff's name, address, date of birth,
23 Social Security number, marital status, occupation, and
24 employers, and if the plaintiff alleges exposure to asbestos
25 through another person, the identity of the other person, and
26 that person's relationship to the plaintiff.

27 b. The asbestos-related disease claimed to exist.

1 c. The plaintiff and plaintiff's counsel have
2 conducted an investigation into all potential sources of the
3 plaintiff's exposure to asbestos and identify with specificity
4 each and every source of exposure to asbestos that is
5 available or known to the plaintiff or plaintiff's counsel and
6 any person through which the plaintiff alleges exposure,
7 including all asbestos-containing products to which the
8 plaintiff or other person were exposed, whether from bankrupt
9 entities or otherwise, and all premises at which the plaintiff
10 and the other person were exposed to asbestos; the specific
11 location and manner of each alleged exposure to asbestos; the
12 beginning and ending dates of each alleged exposure; and the
13 specific connection of each defendant to the alleged exposure
14 to asbestos.

15 (2) Provide all parties with all supporting
16 documentation relating to this section.

17 (b) If a defendant presents evidence that the
18 plaintiff's affidavit is incomplete, the defendant may move
19 the court for an order to require the plaintiff to supplement
20 the affidavit. If the court determines that there is a
21 sufficient basis for the plaintiff to supplement the
22 affidavit, the court shall enter an order to require the
23 plaintiff to supplement the affidavit and shall stay the
24 action until the plaintiff supplements the affidavit as
25 provided by the court and produces the supplemental affidavit
26 to the parties.

1 (c) The court shall dismiss the plaintiff's claim
2 without prejudice if the plaintiff fails to provide the
3 information required in this section or fails to satisfy an
4 order to supplement the plaintiff's affidavit within 90 days
5 from the time the information is required to be provided to
6 the parties.

7 §6-5-693. Bankruptcy trust information.

8 (a) A plaintiff in an asbestos action need not
9 comply with Section 6-5-692, if, within 90 days after the
10 plaintiff files an asbestos action, the plaintiff files all
11 available asbestos trust claims and provides the parties with
12 all trust claim materials available to the plaintiff or
13 plaintiff's counsel in relation to the plaintiff's exposure to
14 asbestos. This section does not apply if the plaintiff
15 complies with Section 6-5-692.

16 (b) A plaintiff has a continuing duty to supplement
17 the information and materials provided under subsection (a)
18 within 30 days after the plaintiff supplements an asbestos
19 trust claim, receives additional information or materials
20 related to an asbestos trust claim, or files an additional
21 trust claim.

22 (c) Not less than 60 days before trial, if a
23 defendant presents evidence that the plaintiff has not filed
24 all available asbestos trust claims, as required under
25 subsection (a), the defendant may move the court for an order
26 to require the plaintiff to file additional trust claims. If a
27 defendant has previously filed a motion under this section,

1 the court shall not grant a subsequent motion if the defendant
2 knew that the claimant met the criteria for payment for the
3 additional trust claim identified in the subsequent motion at
4 the time the earlier motion was filed.

5 (d) Trial in an asbestos action may not begin until
6 at least 60 days after the plaintiff complies with this
7 section.

8 §6-5-694. Discovery.

9 (a) In an asbestos action, there shall be a
10 rebuttable presumption that trust claim materials and trust
11 governance documents are relevant, authentic, and admissible
12 in evidence. A claim of privilege does not apply to trust
13 claim materials or trust governance documents.

14 (b) A defendant in an asbestos action may seek
15 discovery from an asbestos trust. The plaintiff may not claim
16 privilege or confidentiality to bar discovery and shall
17 provide consent or other expression of permission that may be
18 required by the asbestos trust to release the information and
19 materials sought by the defendant.

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.