

1 SB45
2 199427-7
3 By Senator Roberts
4 RFD: Judiciary
5 First Read: 05-MAR-19
6 PFD: 02/27/2019

1 SB45

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4 ENROLLED, An Act,

5 Relating to asbestos trust claims; to add Article
6 35A, commencing with Section 6-5-690, to Chapter 5 of Title 6
7 of the Code of Alabama 1975, to create the Asbestos Exposure
8 Transparency Act; to require a plaintiff in an asbestos action
9 to file a sworn statement disclosing information regarding the
10 plaintiff's exposure to asbestos or, alternatively, file
11 available asbestos trust claims and produce all trust claims
12 materials before trial.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Article 35A, commencing with Section
15 6-5-690, is added to Chapter 5 of Title 6 of the Code of
16 Alabama 1975, to read as follows:

17 §6-5-690.

18 This act shall be known and may be cited as the
19 Asbestos Exposure Transparency Act.

20 §6-5-691. Definitions.

21 For the purposes of this article, the following
22 terms shall have the following meanings:

23 (1) ASBESTOS ACTION. A civil action arising out of,
24 based on, or related to the health effects of exposure to
25 asbestos and any derivative claim made by or on behalf of a

1 person exposed to asbestos or a representative, spouse,
2 parent, child, or other relative of that person. The term
3 asbestos action does not include claims alleging ovarian
4 cancer.

5 (2) ASBESTOS TRUST. A government-approved or
6 court-approved trust, qualified settlement fund, compensation
7 fund, or claims facility that is created as a result of an
8 administrative or legal action, a court-approved bankruptcy,
9 pursuant to 11 U.S.C. §524(g), 11 U.S.C. §1121(a), or other
10 applicable provision of law, that is intended, in whole or in
11 part, to provide compensation to claimants arising out of,
12 based on, or related to the health effects of exposure to
13 asbestos.

14 (3) TRUST CLAIM MATERIALS. A final executed proof of
15 claim and all documents and information submitted to or
16 received from an asbestos trust, including claim forms and
17 supplementary materials, affidavits, medical and health
18 records, depositions and trial testimony of the plaintiff and
19 others knowledgeable about the plaintiff's exposure history,
20 work history, exposure allegations, all documents that reflect
21 the status of a claim against an asbestos trust, and, if the
22 trust claim has been resolved.

23 (4) TRUST GOVERNANCE DOCUMENTS. All documents that
24 relate to eligibility and payment levels, including claims

1 payment matrices, trust distribution procedures, or plans for
2 reorganization, for an asbestos trust.

3 §6-5-692. Required disclosures by plaintiff.

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

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

9 a. The plaintiff's name, address, date of birth,
10 Social Security number, marital status, occupation, and
11 employers, and if the plaintiff alleges exposure to asbestos
12 through another person, the identity of the other person, and
13 that person's relationship to the plaintiff.

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

15 c. The plaintiff and plaintiff's counsel have
16 conducted an investigation into all potential sources of the
17 plaintiff's exposure to asbestos and identify with specificity
18 each and every source of exposure to asbestos that is
19 available or known to the plaintiff or plaintiff's counsel and
20 any person through which the plaintiff alleges exposure,
21 including all asbestos-containing products to which the
22 plaintiff or other person were exposed, whether from bankrupt
23 entities or otherwise, and all premises at which the plaintiff
24 and the other person were exposed to asbestos; the specific
25 location and manner of each alleged exposure to asbestos; the

1 beginning and ending dates of each alleged exposure; and the
2 specific connection of each defendant to the alleged exposure
3 to asbestos.

4 (2) Provide all parties with all supporting
5 documentation relating to this section.

6 (b) If a defendant presents evidence that the
7 plaintiff's affidavit is incomplete, the defendant may move
8 the court for an order to require the plaintiff to supplement
9 the affidavit. If the court determines that there is a
10 sufficient basis for the plaintiff to supplement the
11 affidavit, the court shall enter an order to require the
12 plaintiff to supplement the affidavit and shall stay the
13 action until the plaintiff supplements the affidavit as
14 provided by the court and produces the supplemental affidavit
15 to the parties.

16 (c) The court shall dismiss the plaintiff's claim
17 without prejudice if the plaintiff fails to provide the
18 information required in this section or fails to satisfy an
19 order to supplement the plaintiff's affidavit within 90 days
20 from the time the information is required to be provided to
21 the parties.

22 §6-5-693. Bankruptcy trust information.

23 (a) A plaintiff in an asbestos action need not
24 comply with Section 6-5-692, if, within 90 days after the
25 plaintiff files an asbestos action, the plaintiff files all

1 available asbestos trust claims and provides the parties with
2 all trust claim materials available to the plaintiff or
3 plaintiff's counsel in relation to the plaintiff's exposure to
4 asbestos. This section does not apply if the plaintiff
5 complies with Section 6-5-692.

6 (b) A plaintiff has a continuing duty to supplement
7 the information and materials provided under subsection (a)
8 within 30 days after the plaintiff supplements an asbestos
9 trust claim, receives additional information or materials
10 related to an asbestos trust claim, or files an additional
11 trust claim.

12 (c) Not less than 60 days before trial, if a
13 defendant presents evidence that the plaintiff has not filed
14 all available asbestos trust claims, as required under
15 subsection (a), the defendant may move the court for an order
16 to require the plaintiff to file additional trust claims. If a
17 defendant has previously filed a motion under this section,
18 the court shall not grant a subsequent motion if the defendant
19 knew that the claimant met the criteria for payment for the
20 additional trust claim identified in the subsequent motion at
21 the time the earlier motion was filed.

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

25 §6-5-694. Discovery.

1 (a) In an asbestos action, there shall be a
2 rebuttable presumption that trust claim materials and trust
3 governance documents are relevant, authentic, and admissible
4 in evidence. A claim of privilege does not apply to trust
5 claim materials or trust governance documents.

6 (b) A defendant in an asbestos action may seek
7 discovery from an asbestos trust. The plaintiff may not claim
8 privilege or confidentiality to bar discovery and shall
9 provide consent or other expression of permission that may be
10 required by the asbestos trust to release the information and
11 materials sought by the defendant.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB45
Senate 30-APR-19
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 15-MAY-19

By: Senator Roberts