

1 SB45
2 196498-2
3 By Senator Roberts
4 RFD: Judiciary
5 First Read: 05-MAR-19
6 PFD: 02/27/2019

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8 SYNOPSIS: This bill would create the Asbestos Trust
9 Claims Transparency Act.

10 This bill would require plaintiffs in a
11 asbestos actions to file all available asbestos
12 trust claims and produce all trust claims materials
13 before trial.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to asbestos trust claims; to add Article
20 35A, commencing with Section 6-5-690, to Chapter 5 of Title 6
21 of the Code of Alabama 1975, to create the Asbestos Trust
22 Claims Transparency Act; to require plaintiffs in asbestos
23 actions to file all available asbestos trust claims and
24 produce all trust claims materials before trial.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Article 35A, commencing with Section
2 6-5-690, is added to Chapter 5 of Title 6 of the Code of
3 Alabama 1975, to read as follows:

4 §6-5-690.

5 This act shall be known and may be cited as the
6 Asbestos Trust Claims Transparency Act.

7 §6-5-691. Findings and purpose.

8 (a) The Legislature finds and declares the
9 following:

10 (1) Over 120 employers have declared bankruptcy at
11 least partially due to asbestos-related liability.

12 (2) Scores of trusts have been established in
13 bankruptcy proceedings to form a multi-billion dollar
14 compensation system for asbestos claimants outside of the
15 civil courts, and new asbestos trusts continue to be formed.

16 (3) Asbestos claimants typically seek compensation
17 from solvent defendants in civil actions and from trusts or
18 claims facilities formed in asbestos bankruptcy proceedings.

19 (4) There is limited transparency between these two
20 paths to recovery.

21 (5) An absence of transparency with respect to
22 asbestos bankruptcy trust claims has resulted in the
23 suppression of evidence in asbestos actions.

24 (6) A federal bankruptcy court found that trust
25 claim filings are being manipulated and information is being
26 withheld in order to inflate recoveries in asbestos actions.

1 (7) The lack of transparency regarding trust claims
2 information harms Alabama employers and their employees,
3 shareholders, and communities. Companies that pay inflated
4 settlements and awards in asbestos cases have fewer resources
5 to pay future claimants and invest in the state's economy.

6 (8) Transparency with respect to asbestos trust
7 claims and claims made in civil asbestos actions promotes the
8 integrity of asbestos actions and furthers recovery longevity
9 to help future plaintiffs.

10 (b) The Legislature declares that it is the purpose
11 of this act to do both of the following:

12 (1) Provide transparency with respect to asbestos
13 trust claims and claims made in civil asbestos actions.

14 (2) Reduce the opportunity for withholding or
15 suppressing trust-related exposure evidence in asbestos
16 actions.

17 §6-5-692. Definitions.

18 For the purposes of this article, the following
19 terms shall have the following meanings:

20 (1) ASBESTOS ACTION. A claim for damages or other
21 relief presented in a civil action arising out of, based on,
22 or related to the health effects of exposure to asbestos and
23 any derivative claim made by or on behalf of an individual
24 exposed to asbestos or a representative, spouse, parent,
25 child, or other relative of that individual.

26 (2) ASBESTOS TRUST. A government-approved or
27 court-approved trust, qualified settlement fund, compensation

1 fund, or claims facility that is created as a result of an
2 administrative or legal action, a court-approved bankruptcy,
3 pursuant to 11 U.S.C. §524(g), 11 U.S.C. §1121(a), or other
4 applicable law, that is intended, in whole or in part, to
5 provide compensation to claimants arising out of, based on, or
6 related to the health effects of exposure to asbestos.

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

17 (4) TRUST GOVERNANCE DOCUMENTS. All documents that
18 relate to eligibility and payment levels, including claims
19 payment matrices, trust distribution procedures, or plans for
20 reorganization, for an asbestos trust.

21 §6-5-693. Required disclosures by plaintiff.

22 (a) Within 30 days after an asbestos action is
23 filed, the plaintiff shall do all of the following:

24 (1) File all available asbestos trust claims and
25 provide all parties to the action with a sworn statement
26 indicating that an investigation has been conducted and that

1 all asbestos trust claims that can be made by the plaintiff
2 have been filed.

3 (2) Provide the parties with all trust claim
4 materials from the plaintiff and all law firms connected to
5 the plaintiff in relation to exposure to asbestos.

6 (b) A plaintiff has a continuing duty to supplement
7 the information and materials required 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 §6-5-694. Identification of additional or
13 alternative asbestos trusts by defendant.

14 (a) Not less than 60 days before trial, if a
15 defendant believes that the plaintiff has not filed all
16 available asbestos trust claims, as required under Section
17 6-5-693, the defendant may move the court for an order to
18 require the plaintiff to file additional trust claims. The
19 defendant shall identify the asbestos trust claims the
20 defendant believes the plaintiff is eligible to file.

21 (b) If the court determines that there is a
22 sufficient basis for the plaintiff to file an asbestos trust
23 claim identified by the defendant, the court shall stay the
24 action until the plaintiff files the trust claim and produces
25 all related trust claim materials.

26 (c) If the court orders a stay of the proceedings
27 under subsection (b), the asbestos action may not be set for

1 trial until at least 60 days after the plaintiff complies with
2 this section.

3 §6-5-695. Discovery.

4 (a) In an asbestos action, trust claim materials and
5 trust governance are admissible in evidence and are presumed
6 to be relevant and authentic. A claim of privilege does not
7 apply to trust claim materials or trust governance documents.

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

14 §6-5-696. Setoff.

15 In an asbestos action in which damages are awarded,
16 a defendant is entitled to a setoff in the amount the
17 plaintiff has received from an asbestos trust and, for trust
18 claims not yet paid as of the date of entry of judgment, the
19 amount the plaintiff will receive as specified in the asbestos
20 trust governance documents. If multiple defendants are found
21 liable for damages, the court shall distribute the amount of
22 setoff proportionally between the defendants, according to the
23 liability of each defendant.

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