

HB 2438 -- ASBESTOS

SPONSOR: Corlew

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Civil and Criminal Proceedings by a vote of 6 to 2.

This bill applies to asbestos tort actions filed on or after August 28, 2016, and to pending asbestos tort actions where trial has not commenced as of such date. In its main provisions, the bill:

(1) Requires a claimant to provide all parties in an action a sworn statement identifying each asbestos trust claim he or she has filed or reasonably anticipates filing against an asbestos trust including all available information related to the claim and contact information for the trust;

(2) Allows any defendant in an asbestos tort action to file a motion with the court and with notice to the claimant and all parties in the action, for an order to stay the proceedings. The motion must contain all credible evidence demonstrating the identities of all asbestos trusts not previously disclosed by the claimant under Section 537.882, RSMo, including all information the defendant believes supports the additional asbestos trust claim;

(3) Requires trust claims materials and trust governance documents to be admissible in evidence. Claims of privilege do not apply to trust claims materials or trust governance documents; and

(4) Provides that a noncancer asbestos trust claim and a cancer asbestos trust claim are based on distinct injuries caused by a person's exposure to asbestos and is subject to disclosure. The parties in the asbestos tort action may introduce at trial any trust claims material to prove alternative causation for the exposed person's claimed injury, death, or loss to person, to prove a basis to allocate responsibility for the claimant's claimed injury, death, or loss to person, and to prove issues relevant to an adjudication of the asbestos claim, unless the exclusion of the trust claims material is otherwise required by the rules of evidence. An asbestos trust claim rejected by an asbestos trust may be excluded as evidence if the exclusion is required by the rules of evidence.

This bill is similar to HB 1270 (2015).

PROPONENTS: Supporters say that this bill is about transparency in fairness in asbestos cases. There are two tracks that someone suffering from mesothelioma or an asbestos case can take: The first is in bankruptcy, where a claimant makes a claim against a

trust fund. There are more than sixty such trust funds set up; the second is in litigation against companies that are currently solvent. This bill doesn't take away the ability of a plaintiff to take either track; if they were exposed to asbestos from multiple companies, they can make a claim wherever appropriate. This bill simply says that if a claim is made against a trust fund, the claim must be disclosed if a claim is also being made in litigation. Not disclosing other claims creates unfairness.

Testifying for the bill were Representative Corlew; Mark Behrens, US Chamber Institute For Legal Reform; Lindsay Dibler; Associated Industries of Missouri; Missouri Chamber Of Commerce and Industry; American Insurance Association; and the National Association Of Mutual Insurance Companies.

OPPONENTS: Those who oppose the bill say that the scheduling order in such cases specifies that a plaintiff must divulge other pending claims against a bankruptcy trust fund. This bill is about delaying payment on the claims. This bill seeks to solve a problem that doesn't exist in Missouri. Instead, it creates problems for these individuals that have a cancer that will kill them. One of the witnesses testified that he is an attorney that litigates these claims and fifty percent of his clients die before their trial date. In his opinion, living plaintiffs are awarded more money than deceased plaintiff's, and that is a basis for this legislation. The defendants will seek a stay based on the information disclosed regarding claims made against the bankruptcy trusts.

Testifying against the bill was Bart Baumstark, O'Brien Law Firm.