

HCS HB 1645 -- DAMAGES RELATED TO ASBESTOS

SPONSOR: DeGroot

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Special Committee on Litigation Reform by a vote of 9 to 2. Voted "Do Pass" by the Rules- Legislative Oversight Committee by a vote of 9 to 2.

This bill applies to asbestos tort actions filed on or after August 28, 2018, and to pending asbestos tort actions where trial has not commenced as of such date. The bill:

- (1) Requires a claimant to provide all parties in an action a sworn statement indicating that all asbestos trust claims that the claimant can file have been completed and filed. In addition, the claimant shall provide all parties with all trust materials relating to the asbestos exposure and related claims;
- (2) Allows any defendant in an asbestos tort action to file a motion for an order to stay the proceedings. The motion must contain information the defendant believes supports any additional asbestos trust claim that the claimant may file;
- (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;
- (4) 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. Settlements with bankruptcy trusts shall reduce the claim by the stipulated amount of the agreement or amount of consideration paid; and
- (5) The court may impose sanctions for the claimant's failure to comply with these disclosure requirements. A defendant may, within one year after judgment, move to reopen a judgment in an asbestos action if a claimant files certain additional asbestos trust claims.

This bill is similar to HB 333 (2017) and HB 2438 (2016).

PROPOSERS: Supporters say that this bill prevents a plaintiff from filing an asbestos claim against a solvent defendant, while

not filing or not disclosing claims filed against insolvent defendants with bankruptcy trusts. The requirement that a plaintiff files a claim with an asbestos trust will ensure the plaintiff is compensated fairly but prevents a double recovery, which will also help the trusts remain solvent longer. The discovery provisions will assist defendants in determining who is responsible for the disease.

Testifying for the bill were Representative Degroot; Wayne Wallingford; Mark Behrens, US Chamber Institute for Legal Reform; Lindsay Dibler; Associated Industries of Missouri; National Association of Mutual Insurance Companies; Missouri Chamber of Commerce and Industry; Property Casualty Insurers Association of America; Raymond R. Fournie, Missouri Organization of Defense Lawyers; Michael Fayette; Missouri Insurance Coalition; and Americans Insurance Association.

OPPONENTS: Those who oppose the bill say that it will delay cases because of the increase in discovery and motions to stay filed by defendants resulting in some claimants not being able to present a case to a jury. The requirement to file a trust claim can be complicated and time consuming putting an onerous burden on a claimant. The bill essentially makes manufacturers judgment proof.

Testifying against the bill were Bart Baumstark, O'Brien Law Firm; United Steel Workers (USW); Missouri AFL-CIO; and Lauren Williams, JWMW Law, LLC.