

SECOND REGULAR SESSION

HOUSE BILL NO. 2139

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREGORY.

3871H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to actions for damages due to exposure to asbestos.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto six new sections, to be known as sections 537.880, 537.882, 537.884, 537.886, 537.888, and 537.890, to read as follows:

537.880. 1. The provisions of sections 537.880 to 537.890 shall apply to asbestos actions filed on or after the effective date of such sections and to pending asbestos actions in which trial has not commenced as of such date.

2. As used in sections 537.880 to 537.890, unless the context clearly requires otherwise, the following words and terms shall mean:

(1) "Asbestos action", any claim for damages or other relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos and any derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person;

(2) "Asbestos trust", a government-approved or court-approved trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative or legal action or a court-approved bankruptcy, or created under 11 U.S.C. Section 524(g), 11 U.S.C. Section 1121(a), or other applicable provision of law, that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (3) "Asbestos trust claim", any claim for compensation by an exposed person or the
17 exposed person's representative against any asbestos trust;

18 (4) "Claimant", any person bringing an asbestos action or asserting an asbestos
19 trust claim, including a personal representative if the asbestos action or asbestos trust
20 claim is brought by an estate, or a conservator or next friend if the asbestos action or
21 asbestos trust claim is brought on behalf of a minor or legally incapacitated individual.
22 "Claimant" includes a claimant, counter-claimant, cross-claimant, or third-party claimant;

23 (5) "Exposed person", any person whose exposure to asbestos or to
24 asbestos-containing products is the basis for an asbestos claim;

25 (6) "Trust claim materials", a final executed proof of claim and all documents and
26 information, including copies of electronic data and emails submitted to or received from
27 an asbestos trust by the claimant, including claim forms and supplementary materials,
28 proofs of claim, affidavits, depositions and trial testimony of the claimant and others
29 knowledgeable about the claimant's exposure history, work history, exposure allegations,
30 medical and health records, all documents that reflect the status of a claim against an
31 asbestos trust, and, if the claim has settled, all documents relating to the settlement of the
32 trust claim;

33 (7) "Trust governance document", all documents that relate to eligibility and
34 payment levels, including claims payment matrices, trust distribution procedures, or plans
35 for reorganization for an asbestos trust.

537.882. 1. Within thirty days after an asbestos action is filed or within thirty days
2 of the effective date of this section for asbestos actions that are pending on that effective
3 date, the claimant shall:

4 (1) Provide the court and parties with a sworn statement signed by the claimant
5 and claimant's counsel indicating that an investigation has been conducted and that all
6 asbestos trust claims that can be made by the claimant or any person on the claimant's
7 behalf have been completed and filed. A deferral or placeholder claim that is missing
8 necessary documentation for the trust to review and pay the claim does not meet the
9 requirements of this section. The sworn statement shall indicate whether there has been
10 a request to delay, suspend, withdraw, or otherwise alter the standing of any asbestos trust
11 claim and provide the status and disposition of each asbestos trust claim;

12 (2) Provide all parties with all trust claim materials, including trust claim materials
13 that relate to conditions other than those that are the basis for the asbestos action and
14 including all trust claim materials from all law firms connected to the claimant in relation
15 to exposure to asbestos. Documents provided under this subsection shall be accompanied
16 by an affidavit certifying that the trust claim materials are true and complete; and

17 (3) Produce all available trust claims filed by any individual other than the
18 claimant if the claimant's asbestos trust claim is based on exposure to asbestos through that
19 other individual and the materials are available to the claimant or claimant's counsel.

20 2. The claimant shall have a continuing duty to supplement the statement and
21 materials provided under subsection 1 of this section within thirty days after the claimant
22 files an additional asbestos trust claim, supplements an existing asbestos trust claim, or
23 receives additional trust claim materials related to any asbestos trust claim made against
24 an asbestos trust.

25 3. A court may impose sanctions for failure by a claimant or claimant's counsel to
26 comply with the requirements of sections 537.880 to 537.890, including dismissal of the
27 asbestos action with prejudice for willful failure to comply with the requirements of
28 sections 537.880 to 537.890.

 537.884. 1. No less than sixty days before the date the trial in an asbestos action is
2 set to commence, if the defendant believes the plaintiff has not filed all asbestos trust claims
3 as required by section 537.882, the defendant may move the court for an order to require
4 the plaintiff to file additional trust claims. The motion shall identify the asbestos trust
5 claims the defendant believes the claimant can file and include information supporting
6 those asbestos trust claims.

7 2. Within ten days after the filing of the defendant's motion, the claimant shall:

8 (1) File the asbestos trust claims and produce all related trust claim materials; or

9 (2) File a written response with the court stating why there is insufficient evidence
10 for the claimant to file the asbestos trust claims.

11 3. Within ten days of the claimant filing a written response to the defendant's
12 motion, the court shall determine if there is a sufficient basis for the claimant to file the
13 asbestos trust claim identified in the defendant's motion.

14 4. If the court determines that there is a sufficient basis for the claimant to file an
15 asbestos trust claim identified in the defendant's motion, the court shall stay the asbestos
16 action until the claimant files the asbestos trust claim or claims and produces all related
17 trust claim materials.

18 5. An asbestos action shall not be set for trial until at least forty-five days after the
19 claimant produces the documentation required by this section.

 537.886. 1. Trust claim materials and trust governance documents are presumed
2 to be relevant and authentic and are admissible in evidence in an asbestos action. No
3 claims of privilege apply to trust claim materials or trust governance documents.

4 2. A defendant in an asbestos action may seek discovery against an asbestos trust
5 identified under sections 537.880 to 537.890. The claimant shall not claim privilege or
6 confidentiality to bar discovery. The claimant shall provide consent or any other

7 expression of permission that may be required by the asbestos trust to release information
8 and materials sought by the defendant.

9 3. Trust claim materials that are sufficient to entitle a claim to consideration for
10 payment under the applicable trust governance documents may be sufficient to support a
11 jury finding that the claimant was exposed to products for which the trust was established
12 to provide compensation and that such exposure was a substantial contributing factor in
13 causing the claimant's injury that is at issue in the asbestos action.

14 4. The parties in the asbestos action may introduce at trial any trust claim materials
15 or trust governance documents to prove, without limitation, alternative causation for the
16 exposed person's claimed injury, death, or loss to person; to prove that the bankrupt entity
17 is a joint-tortfeasor, liable for the same injury or wrongful death for the purposes of section
18 537.060; or to prove issues relevant to an adjudication of the asbestos claim, unless the
19 exclusion of the trust claim material is otherwise required by the rules of evidence. The
20 jury shall not be informed of the specific amount of consideration paid by a trust to a
21 claimant in settlement of a claim.

537.888. 1. If a claimant proceeds to trial in an asbestos action before an asbestos
2 trust claim is resolved, there is a rebuttable presumption that the claimant is entitled to,
3 and will receive, the compensation specified in the trust governance documents applicable
4 to his or her claim at the time of trial. The court shall take judicial notice that the trust
5 governance documents specify compensation amounts and payment percentages and shall
6 establish an attributed value to the claimant's asbestos trust claims.

7 2. In an asbestos action in which damages are awarded and setoffs are permitted
8 under applicable law, a defendant is entitled to a setoff or credit in the amount the
9 claimant has been awarded from the asbestos trust and the amount of the valuation
10 established under subsection 1 of this section. If multiple defendants are found to be liable
11 for damages, the court shall distribute the amount of setoff or credit proportionally
12 between the defendants, according to the liability of each defendant.

537.890. 1. If, subsequent to obtaining a judgment in an asbestos action, a claimant
2 files any additional asbestos trust claim with, or submits any additional asbestos trust claim
3 to, an asbestos trust that was in existence at the time the claimant obtained judgment, the
4 trial court, upon the filing by a defendant or judgment debtor of an appropriate motion
5 seeking sanctions or other relief, has jurisdiction to reopen the judgment in the asbestos
6 action and adjust the judgment by the amount of any subsequent asbestos trust payments
7 obtained by the claimant and order any other relief that the court considers just and
8 proper.

9 2. A defendant or judgment debtor shall file any motion under this section within
10 a reasonable time and no more than one year after the judgment was entered or taken.