

HB 333 -- ACTION FOR DAMAGES ASBESTOS

SPONSOR: DeGroot

COMMITTEE ACTION: Voted "Do Pass" by the Special Committee on Litigation Reform by a vote of 8 to 4. Motion to "Do Pass" was defeated by the Standing Committee on Rules- Legislative Oversight by a vote of 5 to 7. A motion was made "To Reconsider" which passed the Standing Committee on Rules- Legislative Oversight by a vote of 8 to 3. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 8 to 3.

This bill applies to asbestos tort actions filed on or after August 28, 2017, 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 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 2438 (2016).

PROPONENTS: 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 file 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 determine who is responsible for the disease.

Testifying for the bill were Representative DeGroot; Missouri Insurance Coalition; Chubb Insurance Group; PCI; Missouri Chamber of Commerce and Industry; Associated Industries of Missouri; American Insurance Association; Missouri Insurance Coalition; Kansas City Power & Light; Lindsay Diblar; Mark Behrens; Missouri Organization of Defense Lawyers; and Property Casualty Insurers Association of America.

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. Defendants are allowed to file an indirect claim against a trust even without the provisions of this bill.

Testifying against the bill were Steven Crick, Humphrey Farrington and McClain; Lauren Boaz, MATA; and SWMK Law.