

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 1645, Page 1, Section 537.880, Line 9, by
2 inserting after all of said line the following:

3
4 "(2) "Asbestos settlement", a settlement of any asbestos action, or any claim for damages or
5 other relief that could have been filed as an asbestos action;"; and

6
7 Further amend said bill and section, Pages 1 to 2, by renumbering said section accordingly; and

8
9 Further amend said bill and section, Page 2, Line 37, by inserting after all of said section and line
10 the following:

11
12 "537.881. 1. Within sixty days after an asbestos action is filed or within thirty days of the
13 effective date of this section for asbestos actions that are pending on that effective date, each
14 defendant shall:

15 (1) Provide the court and parties with a sworn statement signed by an authorized
16 representative of the defendant and defendant's counsel, under penalties of perjury, indicating that
17 an investigation of all asbestos actions or claims against the defendant and all settlements entered
18 into by the defendant or any predecessor thereto has been conducted. The sworn statement shall
19 indicate the outcome or resolution of each such asbestos action, claim or settlement, and for those
20 actions or claims which are not resolved, their current status.

21 (2) Provide all parties with all materials from such actions, claims, or settlements, including
22 materials from all law firms connected to the defendant in relation to asbestos, including anyone at a
23 law firm involved in an asbestos action, claim or settlement, any prior law firm representing the
24 defendant, or any other firm that has represented the defendant in any capacity relating to asbestos.
25 Documents should be accompanied by a custodial affidavit from the defendant certifying that the
26 materials submitted by the defendants are true and complete.

27 2. The defendant shall have a continuing duty, until final resolution of the asbestos action,
28 to supplement the statement and materials provided under subsection 1 of this section. The
29 defendant shall supplement and amend the information and materials provided under subsection 1 of
30 this section within thirty days after any additional action, claim, or settlement.

31 3. A court may impose sanctions for the failure by a defendant or defendant's counsel to
32 comply with this section, including entry of default judgment with prejudice against defendant for
33 willful failure to comply with the requirements of sections 537.800 to 537.890.

34 4. The submission of the sworn statement under subsection 1 of this section shall be in
35 addition to any disclosure requirements otherwise imposed by law, rules of civil procedure, court
36 order or ruling, applicable agreement or stipulation, local rule, or case management order. Nothing

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1 in this section shall prevent a court of competent jurisdiction from requiring any disclosures in
 2 addition to the disclosures required under this section."; and

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 4 Further amend said bill, Page 4, Section 537.886, Line 21, by inserting after all of said section and
 5 line the following:

6 "537.887. 1. Asbestos action, claim, and settlement documents provided under section
 7 537.881 are presumed to be relevant and authentic and are admissible in evidence in an asbestos
 8 action. No claims of privilege shall apply to asbestos action, claim, or settlement documents
 9 provided under section 537.881.

10 2. A plaintiff in an asbestos action may seek discovery against any other party in an asbestos
 11 action, claim, or settlement disclosed by a defendant under section 537.881. The defendant shall not
 12 claim privilege or confidentiality to bar discovery. The defendant shall provide consent or any other
 13 expression of permission that may be required by the other parties to the asbestos action, claim, or
 14 settlement disclosed as provided under section 537.881 to release information and materials sought
 15 by the plaintiff.

16 3. Asbestos action, claim, and settlement documents that are sufficient to have entitled
 17 another person to a judgment against or settlement from the defendant in any asbestos action, claim,
 18 or settlement disclosed under section 537.881 when the exposure occurred at a time overlapping
 19 with the exposure alleged by the plaintiff in an asbestos action may be sufficient to support a jury
 20 finding that the plaintiff was exposed to asbestos by the defendant and that such exposure was a
 21 substantial contributing factor in causing the plaintiff's injury that is at issue in the asbestos action.

22 4. The parties in the asbestos action may introduce at trial any asbestos action, claim, or
 23 settlement documents provided under section 537.881 to prove, without limitation, causation for the
 24 plaintiff's claimed injury, death, or loss; to prove that the defendant is a tortfeasor, liable for the
 25 injury or wrongful death for the purposes of section 537.060; or to prove issues relevant to an
 26 adjudication of the asbestos claim, unless the exclusion of asbestos action, claim, or settlement
 27 materials is otherwise required by the rules of evidence."; and

28
 29 Further amend said bill, Page 5, Section 537.888, Line 15, by inserting after all of said section and
 30 line the following:

31 "537.889. 1. In an asbestos action, upon the filing by a plaintiff of an appropriate motion
 32 seeking sanctions or other relief, the court may impose any sanction provided by court rule or law of
 33 this state including, but not limited to, an entry of default judgment against a defendant for that
 34 defendant's failure to comply with the disclosure requirements of sections 537.880 to 537.890.

35 2. The amount of contribution in asbestos personal injury or wrongful death actions, or
 36 settlement agreements with asbestos injury trusts established under the federal bankruptcy code,
 37 shall be addressed for the purposes of this section in the following manner:

38 (1) In the event a plaintiff has filed a claim with an asbestos injury trust established under
 39 the federal bankruptcy code, any settlement agreement reached shall reduce the plaintiff's claim
 40 against other tortfeasors by the amount of consideration actually received by plaintiff from such
 41 trust.

42 (2) If a defendant satisfies a judgment entered following a verdict in favor of a plaintiff in
 43 an asbestos action, such defendant shall be assigned the plaintiff's right to file and collect
 44 consideration from asbestos trusts under the federal bankruptcy code arising from claims where
 45 consideration has not already been received by the plaintiff."; and

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 47 Further amend said bill by amending the title, enacting clause, and intersectional references
 48 accordingly.