

FIRST REGULAR SESSION

# HOUSE BILL NO. 363

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREGORY.

0958H.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, but does not include a claim for compensatory benefits under workers' compensation law or for veterans' benefits;**

**(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**

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 intended to provide compensation to claimants arising out of, based on, or related to the  
17 health effects of exposure to asbestos;

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

20 (4) "Claimant", any person bringing an asbestos action or asserting an asbestos  
21 trust claim, including a personal representative if the asbestos action or asbestos trust  
22 claim is brought by an estate, or a conservator or next friend if the asbestos action or  
23 asbestos trust claim is brought on behalf of a minor or legally incapacitated individual.

24 "Claimant" includes a claimant, counter-claimant, cross-claimant, or third-party claimant;

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

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

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

38 (8) "Veterans' benefits", a program for benefits in connection with military service  
39 administered by the Veterans' Administration under 38 U.S.C. Title 38;

40 (9) "Workers' compensation", a program administered by the United States or a  
41 state to provide benefits, funded by a responsible employer or its insurance carrier, for  
42 occupational diseases or injuries or for disability or death caused by occupational diseases  
43 or injuries. "Workers' compensation" includes the Longshore and Harbor Workers'  
44 Compensation Act, 33 U.S.C. Section 901 et seq., and the Federal Employees'  
45 Compensation Act, 5 U.S.C. Chapter 81. "Workers' compensation" does not include the  
46 Federal Employers' Liability Act of April 22, 1908, 45 U.S.C. Section 51 et seq.

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 pay the claim does not meet the requirements of  
9 this section. The sworn statement shall indicate whether there has been a request to delay,  
10 suspend, toll, withdraw, or otherwise alter the standing of any asbestos trust claim and  
11 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 include an  
16 affidavit from the claimant certifying that the trust claim materials are true and complete;

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; and

20 (4) Provide the court and parties with a sworn statement signed by the claimant  
21 and claimant's counsel specifying the evidence that provides the basis for each claim  
22 against each defendant. The sworn information form shall include all of the following with  
23 specificity:

24 (a) The name, address, date of birth, marital status, occupation, smoking history,  
25 current and past worksites, and current and past employers of the exposed individual and  
26 any person through whom the exposed person was exposed to asbestos;

27 (b) Each individual through whom the exposed individual was exposed to asbestos  
28 and the exposed individual's relationship to each such individual;

29 (c) Each asbestos-containing product to which the individual, or the other person  
30 if exposure was through another person, was exposed to asbestos and each physical  
31 location at which the individual was exposed to asbestos, or the other person was exposed  
32 if exposure was through another individual;

33 (d) The identity of the manufacturer or seller of the specific asbestos product for  
34 each exposure;

35 (e) The specific location and manner of each exposure, including for any individual  
36 through whom the exposed individual was exposed to asbestos;

37 (f) The beginning and ending dates of each exposure, the frequency and length of  
38 the exposures, and the proximity of the asbestos-containing product or its use to the  
39 exposed person and any person through whom the exposed person was exposed to asbestos;

40 (g) The asbestos-related disease claimed to exist; and

41 (h) Any supporting documentation relating to the information required under this  
42 section.

43 2. The claimant shall have a continuing duty to supplement the statement and  
44 materials required to be provided under subsection 1 of this section within thirty days after  
45 the claimant files an additional asbestos trust claim, supplements an existing asbestos trust  
46 claim, receives additional trust claim materials related to any asbestos trust claim made  
47 against an asbestos trust, files an amended complaint, or receives additional information  
48 that is required to be disclosed under subdivision (4) of subsection 1 of this section.

49 3. The court, on motion by a defendant, shall dismiss the asbestos action without  
50 prejudice as to any defendant whose product or premises is not identified in the required  
51 disclosures set forth under subdivision (4) of subsection 1 of this section.

52 4. The court, on motion by a defendant, shall dismiss the asbestos action without  
53 prejudice if the claimant fails to comply with the requirements of sections 537.880 to  
54 537.890.

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 claimant has not filed all asbestos trust  
3 claims as required by section 537.882, the defendant may move the court for an order to  
4 require the claimant to file additional trust claims. The motion shall identify the asbestos  
5 trust claims the defendant believes the claimant is eligible to file and include information  
6 supporting 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 whether there is a sufficient basis for the claimant to file  
13 the 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 order the claimant  
16 to file the asbestos trust claim and produce all related trust claim materials within ten days.  
17 If the claimant does not comply with the court's order, the asbestos action shall not proceed  
18 to trial until at least ninety days after the claimant complies with the court's order.

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 **The claimant shall not claim privilege or confidentiality to bar discovery. The claimant**  
6 **shall provide consent or any other expression of permission that may be required by the**  
7 **asbestos trust to release information and materials sought by the defendant.**

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

13           **4. The parties in the asbestos action may introduce at trial any trust claim materials**  
14 **or trust governance documents to prove, without limitation, alternative causation for the**  
15 **exposed person's claimed injury, death, or loss to person; to prove that the bankrupt entity**  
16 **is a joint-tortfeasor, liable for the same injury or wrongful death for the purposes of section**  
17 **537.060; or to prove issues relevant to an adjudication of the asbestos claim, unless the**  
18 **exclusion of the trust claim material is otherwise required by the rules of evidence. The**  
19 **jury shall not be informed of the specific amount of consideration paid by a trust to a**  
20 **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 **a defendant is entitled to a setoff or credit in the amount the claimant has received from**  
9 **asbestos trusts and the amount of the valuation established under subsection 1 of this**  
10 **section. If multiple defendants are found liable for damages, the court shall distribute the**  
11 **amount of setoff or credit proportionally between the defendants according to the liability**  
12 **of each defendant.**

13           **3. In an asbestos action in which damages are awarded and a setoff is applied, the**  
14 **setoff or credit for an asbestos trust claim that has been resolved shall be the amount of the**  
15 **actual payment received by the claimant from the asbestos trust after application of any**  
16 **applicable payment percentages.**

**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 of a motion by a defendant or judgment debtor, has jurisdiction  
5 and shall reopen the judgment in the asbestos action and adjust the judgment by the  
6 amount of any subsequent asbestos trust payments obtained by the claimant and order any  
7 other relief that the court considers just and proper.

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

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