Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017

HOUSE BILL NO. 1197
(Representatives K. Koppelman, Jones, Kasper, Keiser, D. Ruby)
(Senators Campbell, Klein, Krebsbach)

AN ACT to create and enact a new chapter to title 32 of the North Dakota Century Code, relating to asbestos bankruptcy trust transparency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 32 of the North Dakota Century Code is created and enacted as follows:

Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbsestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in title 29, Code of Federal Regulations, part 1910.

2. "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance, and any other derivative claim made by or on behalf of an individual exposed to asbestos or a representative, spouse, parent, child, or other relative of the exposed individual. This term does not include a claim for compensatory benefits pursuant to workers' compensation or veterans' benefits.

3. "Asbestos trust" means 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, a court-approved bankruptcy, or pursuant to 11 U.S.C. 524(g), 11 U.S.C. 1121(a), or other applicable provision of law intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.

4. "Plaintiff" means an individual asserting an asbestos action, a decedent if the action is brought on behalf of an estate, and a parent or guardian if the action is brought on behalf of a minor or legally incapacitated individual.

5. "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions, trial testimony, work history, medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the trust claim has settled, all documents relating to the settlement of the trust claim.

6. "Trust governance documents" means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization for an asbestos trust.

7. "Veterans' benefits" means a program administered by the veterans' administration under 38 U.S.C.

8. "Workers' compensation" means a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational

diseases, injuries, disability, or death caused by an individual's occupation. The term does not include 45 U.S.C. 51.

Required disclosures by plaintiff.

1. Within thirty days after an asbestos action is filed, the plaintiff shall:

   a. Provide the court and parties with a sworn statement signed by the plaintiff and plaintiff's counsel indicating an investigation of all asbestos trust claims has been conducted and all asbestos trust claims that could be made by the plaintiff have been filed. The sworn statement must indicate whether a request has been made to defer, delay, suspend, or toll any asbestos trust claim and provide the disposition of each asbestos trust claim.

   b. Provide parties with all trust claims materials, including materials related to the conditions other than those that are the basis for the asbestos action and any materials from all law firms connected to the plaintiff in relation to the plaintiff's exposure to asbestos.

   c. Produce all available trust claims materials submitted to any asbestos trusts by other individuals if the plaintiff's asbestos trust claim is based on exposure to asbestos through those individuals.

2. The plaintiff shall supplement the information and materials required under this section within thirty days after supplementing an existing asbestos trust claim, receiving additional information or materials related to an asbestos trust claim, or filing an additional asbestos trust claim.

3. The court may dismiss an asbestos action if the plaintiff fails to comply with this section.

4. An asbestos action may not proceed to trial until at least one hundred eighty days after the requirements of this section have been met.

Identification of additional or alternative asbestos trust by defendant.

1. A defendant may file a motion requesting a stay of the proceedings by the later of the seventy-fifth day before the trial is set to commence or the fifteenth day after the defendant first obtains information supporting additional trust claims by the plaintiff. The defendant shall produce or describe the documentation the defendant possesses or of which the defendant is aware in support of the motion. Before filing the motion, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional trust claim.

2. Within ten days of receiving the defendant's motion, the plaintiff shall:

   a. File the asbestos trust claims;

   b. File a written response with the court stating why insufficient evidence exists for the plaintiff to file the asbestos trust claims; or

   c. File a written response with the court requesting a determination that the cost to file the asbestos trust claims exceed the plaintiff's reasonably anticipated recovery.

3. If the court determines there is a sufficient basis for the plaintiff to file an asbestos trust claim, the court shall stay the asbestos action until the plaintiff files the asbestos trust claim and produces all related trust claims materials.

4. If the court determines the cost of submitting an asbestos trust claim exceeds the plaintiff's reasonably anticipated recovery, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified asbestos trust.

5. The court may not schedule the asbestos action for trial until at least sixty days after the plaintiff files the documentation required under this section.

Discovery - Use of materials.

1. Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence. A claim of privilege does not apply to any trust claims materials or trust governance documents.

2. A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege to bar discovery and shall provide consent or other expression of permission as required by the asbestos trust to release information and materials sought by the defendant.

3. Trust claims materials sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the trust was established to provide compensation and that such exposure may be a substantial contributing factor in causing the plaintiff's injury.

Trust record.

At least thirty days before trial, the plaintiff shall provide the court with documentation identifying each claim the plaintiff has made against an asbestos trust. The court shall enter the documentation into the record.

Failure to provide information - Sanctions.

1. The court may impose any sanction provided by court rule or law upon the motion of a defendant or judgment debtor seeking sanctions or other relief for failure to comply with the requirements of this chapter.

2. If the plaintiff files an asbestos trust claim after the plaintiff obtains a judgment and the asbestos trust was in existence at the time of the judgment, the trial court upon motion by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to adjust the judgment by the amount of any subsequent asbestos trust payments obtained by the plaintiff and to order additional relief to the parties.

3. A defendant or judgment debtor may file a motion under this section within one year after the court enters a final judgment.

_____ Speaker of the House

_____ President of the Senate

_____ Chief Clerk of the House

_____ Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1197.

House Vote:	Yeas 79	Nays 7	Absent 8
Senate Vote:	Yeas 47	Nays 0	Absent 0

_____ Chief Clerk of the House

Received by the Governor at _____M. on _____, 2017.

Approved at _____M. on _____, 2017.

_____ Governor

Filed in this office this _____day of _____, 2017,

at _____ o'clock _____M.

_____ Secretary of State