

FIRST ENGROSSMENT

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1197

Introduced by

Representatives K. Koppelman, Jones, Kasper, Keiser, D. Ruby

Senators Campbell, Klein, Krebsbach

1 A BILL for an Act to create and enact a new chapter to title 32 of the North Dakota Century  
2 Code, relating to asbestos bankruptcy trust transparency; and to declare an emergency.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

6 **Definitions.**

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

- 8 1. "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbsestos, anthophyllite  
9 asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform  
10 amphibole minerals, and any of these minerals that have been chemically treated or  
11 altered, including all minerals defined as asbestos in title 29, Code of Federal  
12 Regulations, part 1910.
- 13 2. "Asbestos action" means a claim for damages or other civil or equitable relief  
14 presented in a civil action arising out of, based on, or related to the health effects of  
15 exposure to asbestos, including loss of consortium, wrongful death, mental or  
16 emotional injury, risk or fear of disease or other injury, costs of medical monitoring or  
17 surveillance, and any other derivative claim made by or on behalf of an individual  
18 exposed to asbestos or a representative, spouse, parent, child, or other relative of the  
19 exposed individual. This term does not include a claim for compensatory benefits  
20 pursuant to workers' compensation or veterans' benefits.
- 21 3. "Asbestos trust" means a government-approved or court-approved trust, qualified  
22 settlement fund, compensation fund, or claims facility created as a result of an  
23 administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C.  
24 524(g), 11 U.S.C. 1121(a), or other applicable provision of law intended to provide

- 1           compensation to claimants arising out of, based on, or related to the health effects of  
2           exposure to asbestos.
- 3       4. "Plaintiff" means an individual asserting an asbestos action, a decedent if the action is  
4           brought on behalf of an estate, and a parent or guardian if the action is brought on  
5           behalf of a minor or legally incapacitated individual.
- 6       5. "Trust claims materials" means a final executed proof of claim and all other documents  
7           and information related to a claim against an asbestos trust, including claims forms  
8           and supplementary materials, affidavits, depositions, trial testimony, work history,  
9           medical and health records, documents reflecting the status of a claim against an  
10           asbestos trust, and if the trust claim has settled, all documents relating to the  
11           settlement of the trust claim.
- 12       6. "Trust governance documents" means all documents that relate to eligibility and  
13           payment levels, including claims payment matrices, trust distribution procedures, or  
14           plans for reorganization for an asbestos trust.
- 15       7. "Veterans' benefits" means a program administered by the veterans' administration  
16           under 38 U.S.C.
- 17       8. "Workers' compensation" means a program administered by the United States or a  
18           state to provide benefits, funded by a responsible employer or its insurance carrier, for  
19           occupational diseases, injuries, disability, or death caused by an individual's  
20           occupation. The term does not include 45 U.S.C. 51.

21       **Required disclosures by plaintiff.**

- 22       1. Within thirty days after an asbestos action is filed, the plaintiff shall:
- 23           a. Provide the court and parties with a sworn statement signed by the plaintiff and  
24           plaintiff's counsel indicating an investigation of all asbestos trust claims has been  
25           conducted and all asbestos trust claims that could be made by the plaintiff have  
26           been filed. The sworn statement must indicate whether a request has been made  
27           to defer, delay, suspend, or toll any asbestos trust claim and provide the  
28           disposition of each asbestos trust claim.
- 29           b. Provide parties with all trust claims materials, including materials related to the  
30           conditions other than those that are the basis for the asbestos action and any

1                   materials from all law firms connected to the plaintiff in relation to the plaintiff's  
2                   exposure to asbestos.

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

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

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

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

14                  **Identification of additional or alternative asbestos trust by defendant.**

15                  1. A defendant may file a motion requesting a stay of the proceedings by the later of the  
16                  sixtieth day before the trial is set to commence or the fifteenth day after the defendant  
17                  first obtains information supporting additional trust claims by the plaintiff.

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

19                   a. File the asbestos trust claims;

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

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

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

28                  4. If the court determines the cost of submitting an asbestos trust claim exceeds the  
29                  plaintiff's reasonably anticipated recovery, the court shall stay the asbestos action until  
30                  the plaintiff files with the court and provides all parties with a verified statement of the

1           plaintiff's history of exposure, usage, or other connection to asbestos covered by the  
2           identified asbestos trust.

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

5           **Discovery - Use of materials.**

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

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

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

18          **Trust record - Valuation of asbestos trust claims - Judicial notice.**

19          1. The court shall identify every asbestos trust claim made by the plaintiff at least thirty  
20          days before trial.

21          2. If a plaintiff proceeds to trial before an asbestos trust claim is resolved, there is a  
22          rebuttable presumption that the plaintiff is entitled to and will receive the compensation  
23          specified in the trust governance document applicable to the claim at the time of the  
24          trial.

25          3. The court shall take judicial notice that the trust governance document specifies  
26          compensation amounts and payment percentages and establish an attributed value to  
27          the plaintiff's asbestos trust claims.

28          **Failure to provide information - Sanctions.**

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

- 1        2. If the plaintiff files an asbestos trust claim after the plaintiff obtains a judgment and the  
2        asbestos trust was in existence at the time of the judgment, the trial court upon motion  
3        by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to  
4        adjust the judgment by the amount of any subsequent asbestos trust payments  
5        obtained by the plaintiff and to order additional relief to the parties.  
6        3. A defendant or judgment debtor may file a motion under this section within one year  
7        after the court enters a final judgment.

8        **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.