

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~~seventy-fifth day before the trial is set to commence or the fifteenth day after
17 the defendant first obtains information supporting additional trust claims by the plaintiff.
18 The defendant shall produce or describe the documentation the defendant possesses
19 or of which the defendant is aware in support of the motion. Before filing the motion,
20 the defendant shall meet and confer with the plaintiff to discuss why the defendant
21 believes the plaintiff has an additional trust claim.

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

23 a. File the asbestos trust claims;

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

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

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

- 1 4. If the court determines the cost of submitting an asbestos trust claim exceeds the
2 plaintiff's reasonably anticipated recovery, the court shall stay the asbestos action until
3 the plaintiff files with the court and provides all parties with a verified statement of the
4 plaintiff's history of exposure, usage, or other connection to asbestos covered by the
5 identified asbestos trust.
- 6 5. The court may not schedule the asbestos action for trial until at least sixty days after
7 the plaintiff files the documentation required under this section.

8 **Discovery - Use of materials.**

- 9 1. Trust claims materials and trust governance documents are presumed to be relevant
10 and authentic and are admissible in evidence. A claim of privilege does not apply to
11 any trust claims materials or trust governance documents.
- 12 2. A defendant in an asbestos action may seek discovery from an asbestos trust. The
13 plaintiff may not claim privilege to bar discovery and shall provide consent or other
14 expression of permission as required by the asbestos trust to release information and
15 materials sought by the defendant.
- 16 3. Trust claims materials sufficient to entitle a claim to consideration for payment under
17 the applicable trust governance documents may be sufficient to support a jury finding
18 that the plaintiff may have been exposed to products for which the trust was
19 established to provide compensation and that such exposure may be a substantial
20 contributing factor in causing the plaintiff's injury.

21 **Trust record – Valuation of asbestos trust claims – Judicial notice.**

- 22 ~~1. The court shall identify every asbestos trust claim made by the plaintiff at least thirty~~
23 ~~days before trial.~~
- 24 ~~2. If a plaintiff proceeds to trial before an asbestos trust claim is resolved, there is a~~
25 ~~rebuttable presumption that the plaintiff is entitled to and will receive the compensation~~
26 ~~specified in the trust governance document applicable to the claim at the time of the~~
27 ~~trial.~~
- 28 ~~3. The court shall take judicial notice that the trust governance document specifies~~
29 ~~compensation amounts and payment percentages and establish an attributed value to~~
30 ~~the plaintiff's asbestos trust claims.~~ At least thirty days before trial, the plaintiff shall

1 provide the court with documentation identifying each claim the plaintiff has made
2 against an asbestos trust. The court shall enter the documentation into the record.

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

- 4 1. The court may impose any sanction provided by court rule or law upon the motion of a
5 defendant or judgment debtor seeking sanctions or other relief for failure to comply
6 with the requirements of this chapter.
- 7 2. If the plaintiff files an asbestos trust claim after the plaintiff obtains a judgment and the
8 asbestos trust was in existence at the time of the judgment, the trial court upon motion
9 by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to
10 adjust the judgment by the amount of any subsequent asbestos trust payments
11 obtained by the plaintiff and to order additional relief to the parties.
- 12 3. A defendant or judgment debtor may file a motion under this section within one year
13 after the court enters a final judgment.

14 ~~—SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.~~