

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2457

By Committee on Judiciary

1-10

1 AN ACT enacting the asbestos trust claims transparency act; providing for  
2 disclosures regarding asbestos trust claims in civil asbestos actions.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 7, and amendments thereto, may be  
6 cited as the asbestos trust claims transparency act.

7 Sec. 2. The following definitions apply to this act:

8 (a) "Asbestos" has the same meaning as defined in K.S.A. 2017 Supp.  
9 60-4901, and amendments thereto.

10 (b) "Asbestos claim" has the same meaning as defined in K.S.A. 2017  
11 Supp. 60-4901, and amendments thereto.

12 (c) "Asbestos trust" means a government-approved or court-approved  
13 trust, qualified settlement fund, compensation fund or claims facility  
14 created as a result of an administrative or legal action, a court-approved  
15 bankruptcy, or pursuant to 11 U.S.C. § 524(g) or § 1121(a) or other  
16 applicable provision of law, that is intended, in whole or in part, to provide  
17 compensation to claimants arising out of, based on, or related to the health  
18 effects of exposure to asbestos.

19 (d) "Plaintiff" means the person bringing the asbestos claim,  
20 including a personal representative if the asbestos claim is brought by an  
21 estate, or a conservator or next friend if the asbestos claim is brought on  
22 behalf of a minor or legally incapacitated individual, and any person who  
23 is representing the plaintiff or has a fiduciary duty to the plaintiff for the  
24 action, including the plaintiff's representatives, agents, counsel and  
25 assigns.

26 (e) "Trust claim materials" means all documents and information filed  
27 or submitted by or on behalf of the plaintiff as part of or related to a claim  
28 against an asbestos trust, including a final executed proof of claim, claim  
29 forms and supplementary materials, affidavits, depositions and trial  
30 testimony, work history, medical and health records, documents  
31 demonstrating asbestos exposure or the health effects of exposure to  
32 asbestos or the validity of a trust claim or other materials that an asbestos  
33 trust requires in order to support the trust claim, documents reflecting the  
34 status of a claim against an asbestos trust, and, if the trust claim has  
35 settled, all documents relating to the settlement of the asbestos trust claim.

36 (f) "Trust governance documents" means all documents that relate to

1 eligibility and payment levels, including claims payment matrices, trust  
2 distribution procedures, or plans for reorganization, for an asbestos trust.

3 Sec. 3. (a) ~~Within 30 days after an asbestos claim is filed, or within~~  
4 ~~30 days after the effective date of this act, whichever is later~~ **No later than**  
5 **30 days prior to the date the court establishes for the completion of all**  
6 **fact discovery**, the plaintiff, and any person who is representing the  
7 plaintiff or has a fiduciary duty to the plaintiff with respect to the asbestos  
8 claim, shall do all of the following:

9 (1) Conduct an investigation and file all asbestos trust claims that can  
10 be made by the plaintiff;

11 (2) provide the court and parties with a sworn statement signed by the  
12 plaintiff and the plaintiff's counsel in the asbestos claim, under penalty of  
13 perjury, indicating that an investigation of asbestos trust claims has been  
14 conducted by the plaintiff and any person who is representing the plaintiff  
15 or has a fiduciary duty to the plaintiff with respect to the asbestos claim,  
16 and further indicating that all asbestos trust claims that can be made by the  
17 plaintiff or on the plaintiff's behalf have been completed and filed. A  
18 deferral or placeholder claim that has missing documentation for the  
19 asbestos trust to review and pay the claim does not meet the requirements  
20 of this section. The sworn statement must indicate whether there has been  
21 a request to delay, suspend, withdraw or otherwise alter the standing of an  
22 asbestos trust claim and provide the status and disposition of each asbestos  
23 trust claim, including the amount of any trust claim payment made or to be  
24 made to the plaintiff;

25 (3) provide all parties with all trust claim materials, including trust  
26 claim materials that relate to conditions other than those that are the basis  
27 for the asbestos claim and all trust claim materials from all law firms  
28 connected to the plaintiff in relation to exposure to asbestos, including  
29 anyone at a law firm or any fiduciaries involved in the asbestos claim, any  
30 referring law firm, and any other firm or fiduciary that has filed an  
31 asbestos trust claim for the plaintiff or on the plaintiff's behalf. Documents  
32 shall be accompanied by a custodial affidavit from the asbestos trust  
33 certifying that the trust claim materials submitted to the defendants are true  
34 and complete; and

35 (4) if the plaintiff's asbestos trust claim is based on exposure to  
36 asbestos through another individual, the plaintiff shall produce all trust  
37 claim materials submitted by or on behalf of the other individual to any  
38 asbestos trust if the plaintiff is in possession, control or custody of those  
39 trust claim materials, or if the plaintiff, plaintiff's counsel or any of the  
40 plaintiff's fiduciaries are legally entitled to obtain those trust claim  
41 materials.

42 (b) The plaintiff has a continuing duty to supplement the information  
43 and materials required under subsection (a), and the supplementation shall

1 be made within 30 days after the plaintiff or a person on the plaintiff's  
2 behalf supplements an existing asbestos trust claim, receives additional  
3 information or materials related to an asbestos trust claim, or files an  
4 additional asbestos trust claim. The requirements of this section are in  
5 addition to any notice or materials to be served or produced as part of  
6 discovery and under any other law, rule, order or applicable agreement.

7 ~~(e) The court may dismiss the asbestos claim if the plaintiff fails to~~  
8 ~~comply with this section.~~

9 Sec. 4. (a) A defendant may file a motion ~~requesting a stay of the~~  
10 ~~asbestos claim on or before the 60<sup>th</sup> day before the date the trial in the~~  
11 ~~action is set to commence. The motion shall identify~~ **no later than the**  
12 **date the court establishes for the completion of all fact discovery**  
13 **identifying** the asbestos trust claims the defendant believes the plaintiff  
14 can file and include information supporting the asbestos trust claims.

15 (b) Within 10 days after receiving the defendant's motion, the plaintiff  
16 shall:

17 (1) File the asbestos trust claims;

18 (2) file a written response with the court stating why there is  
19 insufficient evidence for the plaintiff to file the asbestos trust claims; or

20 (3) file a written response with the court requesting a determination  
21 that the cost to file the asbestos trust claims exceeds the plaintiff's  
22 reasonably anticipated recovery.

23 (c) (1) If the court determines that there is a sufficient basis for the  
24 plaintiff to file an asbestos trust claim identified in the motion to stay, the  
25 court shall stay the asbestos claim until the plaintiff files the asbestos trust  
26 claim and produces all related trust claim materials.

27 (2) If the court determines that the cost of submitting an asbestos trust  
28 claim exceeds the plaintiff's reasonably anticipated recovery, ~~the court~~  
29 ~~shall stay the asbestos claim until~~ the plaintiff **files** **shall file** with the court  
30 and provides all parties with a verified statement of the plaintiff's history  
31 of exposure, usage or other connection to asbestos covered by that  
32 asbestos trust **within 30 days of the court's determination**.

33 ~~(d) An asbestos claim may not be set for trial until at least 60 days~~  
34 ~~after the plaintiff provides the documentation required by this section.~~

35 Sec. 5. (a) Trust claim materials and trust governance documents are  
36 presumed to be relevant and authentic, and are admissible in evidence in  
37 an asbestos claim. A claim of privilege does not apply to any trust claim  
38 materials or trust governance documents.

39 (b) A defendant in an asbestos claim may seek discovery from an  
40 asbestos trust. The plaintiff may not claim privilege or confidentiality to  
41 bar discovery and shall provide consent or other expression of permission  
42 that may be required by the asbestos trust to release information and  
43 materials sought by a defendant.

1       ~~(e) Trust claim materials that are sufficient to entitle a claim to~~  
2 ~~consideration for payment under the applicable trust governance~~  
3 ~~documents may be sufficient to support a jury finding that the plaintiff was~~  
4 ~~exposed to products for which the trust was established to provide~~  
5 ~~compensation and that such exposure was a substantial contributing factor~~  
6 ~~in causing the plaintiff's injury that is at issue in the asbestos claim.~~

7       Sec. 6. (a) If the plaintiff or a person on the plaintiff's behalf files an  
8 asbestos trust claim after the plaintiff obtains a judgment in an asbestos  
9 claim, and that asbestos trust was in existence at the time the plaintiff  
10 obtained the judgment, the trial court, on motion by a defendant or  
11 judgment debtor seeking sanctions or other relief, has jurisdiction to  
12 reopen the judgment in the asbestos claim and adjust the judgment by the  
13 amount of any subsequent asbestos trust payments obtained by the plaintiff  
14 and order any other relief to the parties that the court considers just and  
15 proper.

16       (b) A defendant or judgment debtor shall file any motion under this  
17 section within a reasonable time and not more than one year after the  
18 judgment **in the asbestos claim** was entered.

19       Sec. 7. This act shall apply to all asbestos claims filed on or after July  
20 1, 2018. ~~This act shall also apply to any pending asbestos claims in which~~  
21 ~~trial has not commenced as of July 1, 2018.~~

22       Sec. 8. This act shall take effect and be in force from and after its  
23 publication in the statute book.