

1 HB100
2 199451-3
3 By Representative Carns
4 RFD: Commerce and Small Business
5 First Read: 05-MAR-19

1 ENGROSSED

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3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to asbestos trust claims; to add Article
9 35A, commencing with Section 6-5-690, to Chapter 5 of Title 6
10 of the Code of Alabama 1975, to create the Asbestos Exposure
11 Transparency Act; to require a plaintiff in an asbestos action
12 to file a sworn statement disclosing information regarding the
13 plaintiff's exposure to asbestos or, alternatively, file
14 available asbestos trust claims and produce all trust claims
15 materials before trial.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Article 35A, commencing with Section
18 6-5-690, is added to Chapter 5 of Title 6 of the Code of
19 Alabama 1975, to read as follows:

20 §6-5-690.

21 This act shall be known and may be cited as the
22 Asbestos Exposure Transparency Act.

23 §6-5-691. Definitions.

24 For the purposes of this article, the following
25 terms shall have the following meanings:

26 (1) ASBESTOS ACTION. A civil action arising out of,
27 based on, or related to the health effects of exposure to

1 asbestos and any derivative claim made by or on behalf of a
2 person exposed to asbestos or a representative, spouse,
3 parent, child, or other relative of that person. The term
4 asbestos action does not include claims alleging ovarian
5 cancer.

6 (2) ASBESTOS TRUST. A government-approved or
7 court-approved trust, qualified settlement fund, compensation
8 fund, or claims facility that is created as a result of an
9 administrative or legal action, a court-approved bankruptcy,
10 pursuant to 11 U.S.C. §524(g), 11 U.S.C. §1121(a), or other
11 applicable provision of law, that is intended, in whole or in
12 part, to provide compensation to claimants arising out of,
13 based on, or related to the health effects of exposure to
14 asbestos.

15 (3) TRUST CLAIM MATERIALS. A final executed proof of
16 claim and all documents and information submitted to or
17 received from an asbestos trust, including claim forms and
18 supplementary materials, affidavits, medical and health
19 records, depositions and trial testimony of the plaintiff and
20 others knowledgeable about the plaintiff's exposure history,
21 work history, exposure allegations, all documents that reflect
22 the status of a claim against an asbestos trust, and, if the
23 trust claim has been resolved.

24 (4) TRUST GOVERNANCE DOCUMENTS. All documents that
25 relate to eligibility and payment levels, including claims
26 payment matrices, trust distribution procedures, or plans for
27 reorganization, for an asbestos trust.

1 §6-5-692. Required disclosures by plaintiff.

2 (a) Subject to Section 6-5-693, within 90 days after
3 a plaintiff files an asbestos action, the plaintiff shall do
4 all of the following:

5 (1) Provide all parties with an affidavit, signed
6 under oath by the plaintiff, stating all of the following:

7 a. The plaintiff's name, address, date of birth,
8 Social Security number, marital status, occupation, and
9 employers, and if the plaintiff alleges exposure to asbestos
10 through another person, the identity of the other person, and
11 that person's relationship to the plaintiff.

12 b. The asbestos-related disease claimed to exist.

13 c. The plaintiff and plaintiff's counsel have
14 conducted an investigation into all potential sources of the
15 plaintiff's exposure to asbestos and identify with specificity
16 each and every source of exposure to asbestos that is
17 available or known to the plaintiff or plaintiff's counsel and
18 any person through which the plaintiff alleges exposure,
19 including all asbestos-containing products to which the
20 plaintiff or other person were exposed, whether from bankrupt
21 entities or otherwise, and all premises at which the plaintiff
22 and the other person were exposed to asbestos; the specific
23 location and manner of each alleged exposure to asbestos; the
24 beginning and ending dates of each alleged exposure; and the
25 specific connection of each defendant to the alleged exposure
26 to asbestos.

1 (2) Provide all parties with all supporting
2 documentation relating to this section.

3 (b) If a defendant presents evidence that the
4 plaintiff's affidavit is incomplete, the defendant may move
5 the court for an order to require the plaintiff to supplement
6 the affidavit. If the court determines that there is a
7 sufficient basis for the plaintiff to supplement the
8 affidavit, the court shall enter an order to require the
9 plaintiff to supplement the affidavit and shall stay the
10 action until the plaintiff supplements the affidavit as
11 provided by the court and produces the supplemental affidavit
12 to the parties.

13 (c) The court shall dismiss the plaintiff's claim
14 without prejudice if the plaintiff fails to provide the
15 information required in this section or fails to satisfy an
16 order to supplement the plaintiff's affidavit within 90 days
17 from the time the information is required to be provided to
18 the parties.

19 §6-5-693. Bankruptcy trust information.

20 (a) A plaintiff in an asbestos action need not
21 comply with Section 6-5-692, if, within 90 days after the
22 plaintiff files an asbestos action, the plaintiff files all
23 available asbestos trust claims and provides the parties with
24 all trust claim materials available to the plaintiff or
25 plaintiff's counsel in relation to the plaintiff's exposure to
26 asbestos. This section does not apply if the plaintiff
27 complies with Section 6-5-692.

1 (b) A plaintiff has a continuing duty to supplement
2 the information and materials provided under subsection (a)
3 within 30 days after the plaintiff supplements an asbestos
4 trust claim, receives additional information or materials
5 related to an asbestos trust claim, or files an additional
6 trust claim.

7 (c) Not less than 60 days before trial, if a
8 defendant presents evidence that the plaintiff has not filed
9 all available asbestos trust claims, as required under
10 subsection (a), the defendant may move the court for an order
11 to require the plaintiff to file additional trust claims. If a
12 defendant has previously filed a motion under this section,
13 the court shall not grant a subsequent motion if the defendant
14 knew that the claimant met the criteria for payment for the
15 additional trust claim identified in the subsequent motion at
16 the time the earlier motion was filed.

17 (d) Trial in an asbestos action may not begin until
18 at least 60 days after the plaintiff complies with this
19 section.

20 §6-5-694. Discovery.

21 (a) In an asbestos action, there shall be a
22 rebuttable presumption that trust claim materials and trust
23 governance documents are relevant, authentic, and admissible
24 in evidence. A claim of privilege does not apply to trust
25 claim materials or trust governance documents.

26 (b) A defendant in an asbestos action may seek
27 discovery from an asbestos trust. The plaintiff may not claim

1 privilege or confidentiality to bar discovery and shall
2 provide consent or other expression of permission that may be
3 required by the asbestos trust to release the information and
4 materials sought by the defendant.

5 Section 2. This act shall become effective on the
6 first day of the third month following its passage and
7 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce and
Small Business..... 05-MAR-19

Read for the second time and placed
on the calendar with 1 substitute
and..... 18-APR-19

Read for the third time and passed
as amended..... 25-APR-19

Yeas 102, Nays 0, Abstains 0

Jeff Woodard
Clerk