

## CHAPTER 686A

### ASBESTOS BANKRUPTCY TRUST CLAIMS

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#### **686A.1 Title.**

This chapter shall be known and may be cited as the “*Asbestos Bankruptcy Trust Claims Transparency Act*”.

2017 Acts, ch 11, §1

#### **686A.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Asbestos*” means chrysotile, amosite, crocidolite, tremolite asbestos, 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 29 C.F.R. pt. 1910, at the time the asbestos action is filed.

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 a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person.

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) or 11 U.S.C. §1121(a) or other applicable provision of law, that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.

4. “*Plaintiff*” means the person bringing an asbestos action, including a personal representative if the asbestos action is brought by an estate, or a conservator or next friend if the asbestos 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 and trial testimony, work history, and 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.

2017 Acts, ch 11, §2

Referred to in §686B.2, 686C.2

#### **686A.3 Required disclosures by plaintiff.**

1. Within ninety days after an asbestos action is filed, or within ninety days after July 1, 2017, whichever is later, the plaintiff shall do all of the following:

a. Provide the court and parties with a sworn statement signed by the plaintiff and the plaintiff’s counsel, under penalty of perjury, indicating that an investigation of all asbestos trust claims has been conducted and that all asbestos trust claims that may be made by the plaintiff or any person on the plaintiff’s behalf have been filed. The sworn statement must

indicate whether there has been a request to defer, delay, suspend, or toll any asbestos trust claim, and provide the disposition of each asbestos trust claim.

b. Provide all parties with all trust claims materials, including trust claims materials that relate to conditions other than those that are the basis for the asbestos action and including all trust claims materials from all attorneys connected to the plaintiff in relation to exposure to asbestos, including any attorney involved in the asbestos action, any referring attorney, and any other attorney who has filed an asbestos trust claim for the plaintiff or on the plaintiff's behalf.

c. If the plaintiff's asbestos trust claim is based on exposure to asbestos through another individual, the plaintiff shall produce all trust claims materials submitted by the other individual to any asbestos trusts if the materials are available to the plaintiff or the plaintiff's counsel.

2. The plaintiff shall supplement the information and materials required under [subsection 1](#) within thirty days after the plaintiff or a person on the plaintiff's behalf supplements an existing asbestos trust claim, receives additional information or materials related to an asbestos trust claim, or files an additional asbestos trust claim.

3. The court may dismiss the asbestos action if the plaintiff fails to comply with [this section](#).

4. An asbestos action shall not be set for trial until at least one hundred eighty days after the requirements of [subsection 1](#) are met.

[2017 Acts, ch 11, §3](#)

#### **686A.4 Identification of additional or alternative asbestos trusts by defendant.**

1. A defendant may file a motion requesting a stay of the proceedings on or before the later of the sixtieth day before the date trial in the action is set to commence or the fifteenth day after the defendant first obtains information that could support additional trust claims by the plaintiff. The motion shall identify the asbestos trust claims the defendant believes the plaintiff can file and include information supporting the asbestos trust claims.

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

a. File the asbestos trust claims.

b. File a written response with the court stating the reason there is insufficient evidence for the plaintiff to file the asbestos trust claims.

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

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

b. If the court determines that 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 that asbestos trust.

4. An asbestos action shall not be set for trial until at least sixty days after the plaintiff provides the documentation required by [this section](#).

[2017 Acts, ch 11, §4](#)

#### **686A.5 Discovery — use of materials.**

1. Trust claims materials and trust governance documents are presumed to be relevant and authentic, and are admissible in evidence in an asbestos action. Notwithstanding any other provision of law to the contrary, 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. Notwithstanding any other provision of law to the contrary, the plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.

3. Trust claim materials that are 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, under applicable law, such exposure may be a substantial contributing factor in causing the plaintiff's injury that is at issue in the asbestos action.

[2017 Acts, ch 11, §5](#)

#### **686A.6 Trust record — valuation of asbestos trust claims — judicial notice.**

1. Not less than thirty days before trial in an asbestos action, the court shall enter into the record a document that identifies every asbestos trust claim made by the plaintiff or on the plaintiff's behalf.

2. If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved, there is a rebuttable presumption that the plaintiff is entitled to, and will receive, the compensation specified in the trust governance document applicable to the plaintiff's claim at the time of trial. The court shall take judicial notice that the trust governance document specifies compensation amounts and payment percentages and shall establish an attributed value to the plaintiff's asbestos trust claims.

[2017 Acts, ch 11, §6](#)

Referred to in [§686A.7](#)

#### **686A.7 Setoff — credit.**

In any asbestos action in which damages are awarded and setoffs are permitted under applicable law, a defendant is entitled to a setoff or credit in the amount the plaintiff has been awarded from an asbestos trust identified in [section 686A.6, subsection 1](#), and the amount of the valuation established under [section 686A.6, subsection 2](#). If multiple defendants are found liable for damages, the court shall distribute the amount of setoff or credit proportionally between the defendants, according to the liability of each defendant.

[2017 Acts, ch 11, §7](#)

#### **686A.8 Failure to provide information — sanctions.**

1. On the motion of a defendant or judgment debtor seeking sanctions or other relief in an asbestos action, the court may impose any sanction provided by court rule or a law of this state, including but not limited to vacating a judgment rendered in the action, for a plaintiff's failure to comply with the disclosure requirements of [this chapter](#).

2. If the plaintiff or a person on the plaintiff's behalf files an asbestos trust claim after the plaintiff obtains a judgment in an asbestos action, and that asbestos trust was in existence at the time the plaintiff obtained the judgment, the trial court, on motion by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to reopen the judgment in the asbestos action and adjust the judgment by the amount of any subsequent asbestos trust payments obtained by the plaintiff and order any other relief to the parties that the court considers just and proper.

3. A defendant or judgment debtor shall file any motion under [this section](#) within a reasonable time and not more than one year after the judgment was entered.

[2017 Acts, ch 11, §8](#)

#### **686A.9 Application.**

1. [This chapter](#) applies to all asbestos actions filed on or after July 1, 2017.

2. [This chapter](#) applies to all pending asbestos actions in which trial has not commenced as of July 1, 2017, unless the court finds that the application of a provision in [this chapter](#) would unconstitutionally affect a vested right. In that case, the provision does not apply and the court shall apply prior law.

[2017 Acts, ch 11, §9](#)