



February 12, 2019

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## HOUSE BILL No. 1181

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DIGEST OF HB 1181 (Updated February 11, 2019 12:06 pm - DI 123)

**Citations Affected:** IC 34-61.

**Synopsis:** Asbestos litigation. Requires certain disclosures regarding asbestos trust claims in civil asbestos actions. Requires a defendant to identify additional trust claims that a defendant believes a plaintiff is eligible for in a written motion (motion). Requires a defendant to disclose, in the defendant's motion, the basis for the defendant's belief that a plaintiff is eligible for an additional trust claim. Prohibits a defendant from filing an additional motion alleging plaintiff eligibility for additional trust claims in certain instances.

**Effective:** July 1, 2019.

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### Lehman, Torr

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January 8, 2019, read first time and referred to Committee on Judiciary.  
February 11, 2019, amended, reported — Do Pass.

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HB 1181—LS 6516/DI 128





February 12, 2019

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

## HOUSE BILL No. 1181

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A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-61 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2019]:

4 **ARTICLE 61. ASBESTOS TRUST CLAIMS**  
5 **TRANSPARENCY ACT**

6 **Chapter 1. Definitions**

7 **Sec. 1. The definitions in this chapter apply throughout this**  
8 **article.**

9 **Sec. 2. "Asbestos action" means:**

10 **(1) a civil lawsuit filed in a state or federal court of competent**  
11 **jurisdiction, seeking damages for an injury arising out of,**  
12 **based on, or related to the health effects of exposure to**  
13 **asbestos; and**

14 **(2) a lawsuit derivative of an action described in subdivision**  
15 **(1) made by or on behalf of a person exposed to asbestos or a**  
16 **representative, spouse, parent, child, or other relative of that**  
17 **person.**

HB 1181—LS 6516/DI 128



1           **Sec. 3. "Asbestos trust" means a government approved or court**  
2 **approved trust, qualified settlement fund, compensation fund, or**  
3 **claims facility created:**

- 4           (1) as a result of an administrative or legal action;
- 5           (2) as a result of a court approved bankruptcy; or
- 6           (3) under 11 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other
- 7           applicable provision of law;

8 **that is intended to provide compensation to claimants arising out**  
9 **of, based on, or related to the health effects of exposure to asbestos.**

10           **Sec. 4. "Trust claims materials" means:**

- 11           (1) a final executed proof of claim;
- 12           (2) all documents and information submitted to or received
- 13           from an asbestos trust by the claimant or the claimant's
- 14           representative, including:
  - 15           (A) claim forms and supplementary materials;
  - 16           (B) affidavits;
  - 17           (C) depositions and trial testimony of the claimant and
  - 18           others knowledgeable about the claimant's exposure
  - 19           history;
  - 20           (D) employment history;
  - 21           (E) exposure allegations; and
  - 22           (F) medical and health records;
- 23           (3) all documents reflecting the status of a claim filed with an
- 24           asbestos trust; and
- 25           (4) if the trust claim has been resolved, all documents relating
- 26           to the resolution of the trust claim.

27           **Sec. 5. "Trust governance documents" means all documents that**  
28 **relate to eligibility and payment levels for an asbestos trust,**  
29 **including:**

- 30           (1) claims payment matrices;
- 31           (2) trust distribution procedures; and
- 32           (3) plans for reorganization.

33           **Chapter 2. Required Disclosures by Plaintiff**

34           **Sec. 1. (a) Not later than thirty (30) days after an asbestos action**  
35 **is filed, the plaintiff shall:**

- 36           (1) provide all parties with a sworn statement indicating that
- 37           an investigation has been conducted and that all asbestos trust
- 38           claims that can be made by the plaintiff have been filed; and
- 39           (2) provide all parties with all trust claims materials from all
- 40           lawyers, law firms, and other representatives retained by or
- 41           on behalf of the plaintiff relating to exposure to asbestos.
- 42           (b) A deferral or placeholder claim that is missing



1 documentation for the asbestos trust to pay the claim does not meet  
2 the requirements of this section.

3 (c) A plaintiff has a continuing duty to supplement the  
4 information and materials required under subsection (a) not later  
5 than thirty (30) days after the plaintiff:

- 6 (1) supplements an existing asbestos trust claim;  
7 (2) receives additional information or materials related to an  
8 asbestos trust claim; or  
9 (3) files an additional asbestos trust claim.

10 Sec. 2. The court shall dismiss the asbestos action if the plaintiff  
11 fails to comply with this chapter.

12 Chapter 3. Identification of Additional Asbestos Trust Claims  
13 by Defendant

14 Sec. 1. (a) If a defendant believes that the plaintiff has not filed  
15 all asbestos trust claims as required under IC 34-61-2, then, not  
16 later than sixty (60) days before trial, the defendant may move the  
17 court for an order requiring the plaintiff to file additional trust  
18 claims.

19 (b) A defense motion filed under this section must identify the  
20 asbestos trust claims for which the defendant believes the plaintiff  
21 is eligible. A defendant must produce or describe the information  
22 being used to support the filing of a defense motion under this  
23 subsection.

24 (c) If a defendant has previously filed a motion under this  
25 section, the court shall not grant a subsequent defense motion  
26 made under this section if the defendant knew that the plaintiff was  
27 eligible for the additional trust claim identified in the subsequent  
28 defense motion at the time the earlier defense motion was filed.

29 (d) If the court determines that there is a sufficient basis for the  
30 plaintiff to file an asbestos trust claim identified by the defendant  
31 in the motion under subsection (a), the court shall stay the asbestos  
32 action until the plaintiff:

- 33 (1) files the asbestos trust claim; and  
34 (2) produces all related trust claims materials.

35 Sec. 2. The court may not set an asbestos action for trial until at  
36 least sixty (60) days after the plaintiff complies with this chapter.

37 Chapter 4. Discovery and Evidence at Trial

38 Sec. 1. Trust claims materials and trust governance documents  
39 are presumed to be relevant and authentic and are admissible in  
40 evidence in an asbestos action.

41 Sec. 2. A claim of privilege does not apply to:

- 42 (1) trust claims materials; or



1           **(2) trust governance documents.**  
2           **Sec. 3. (a) A defendant in an asbestos action may seek discovery**  
3 **from an asbestos trust.**  
4           **(b) The plaintiff:**  
5           **(1) may not claim privilege or confidentiality to bar discovery;**  
6           **and**  
7           **(2) shall provide consent or other expression of permission**  
8 **that may be required by the asbestos trust to release**  
9 **information and materials sought by a defendant.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1181, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, delete lines 12 through 26, begin a new paragraph and insert:

**"Chapter 3. Identification of Additional Asbestos Trust Claims by Defendant**

**Sec. 1. (a) If a defendant believes that the plaintiff has not filed all asbestos trust claims as required under IC 34-61-2, then, not later than sixty (60) days before trial, the defendant may move the court for an order requiring the plaintiff to file additional trust claims.**

**(b) A defense motion filed under this section must identify the asbestos trust claims for which the defendant believes the plaintiff is eligible. A defendant must produce or describe the information being used to support the filing of a defense motion under this subsection.**

**(c) If a defendant has previously filed a motion under this section, the court shall not grant a subsequent defense motion made under this section if the defendant knew that the plaintiff was eligible for the additional trust claim identified in the subsequent defense motion at the time the earlier defense motion was filed.**

**(d) If the court determines that there is a sufficient basis for the plaintiff to file an asbestos trust claim identified by the defendant in the motion under subsection (a), the court shall stay the asbestos action until the plaintiff:**

- (1) files the asbestos trust claim; and**
- (2) produces all related trust claims materials.**

**Sec. 2. The court may not set an asbestos action for trial until at least sixty (60) days after the plaintiff complies with this chapter."**

and when so amended that said bill do pass.

(Reference is to HB 1181 as introduced.)

TORR

Committee Vote: yeas 7, nays 6.

HB 1181—LS 6516/DI 128

