

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 421

Introduced by Hilgers, 21.

Read first time January 18, 2019

Committee:

- 1 A BILL FOR AN ACT relating to asbestos; to adopt the Asbestos Trust
- 2 Claims Transparency Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known and may be
2 cited as the Asbestos Trust Claims Transparency Act.

3 Sec. 2. For purposes of the Asbestos Trust Claims Transparency Act:

4 (1) Asbestos action means a claim for damages or other relief
5 presented in a civil action arising out of, based on, or related to the
6 health effects of exposure to asbestos and any derivative claim made by
7 or on behalf of a person exposed to asbestos or a representative, spouse,
8 parent, child, or other relative of that person;

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

16 (3) Trust claim materials means a final executed proof of claim and
17 all documents and information submitted to or received from an asbestos
18 trust by the plaintiff in an asbestos action, including:

19 (a) Claim forms and supplementary materials, affidavits,
20 depositions, medical and health records, and trial testimony of the
21 plaintiff and others knowledgeable about the plaintiff's exposure
22 history, work history, and exposure allegations; and

23 (b) All documents that reflect the status of a claim against an
24 asbestos trust and, if the trust claim has been resolved, all documents
25 relating to the resolution of the trust claim; and

26 (4) Trust governance documents means all documents that relate to
27 eligibility and payment levels for an asbestos trust, including claims
28 payment matrices, trust distribution procedures, or plans for
29 reorganization.

30 Sec. 3. (1) Within thirty days after filing an asbestos action, the
31 plaintiff shall:

1 (a) File all available asbestos trust claims and provide all parties
2 with a sworn statement indicating that an investigation has been
3 conducted and that all asbestos trust claims that can be made by the
4 plaintiff have been filed. A deferral or placeholder claim that is
5 missing documentation for the asbestos trust to pay the claim does not
6 meet the requirements of this subdivision;

7 (b) Provide all parties with all trust claim materials from the
8 plaintiff and all lawyers, law firms, or other authorized representatives
9 retained by or on behalf of the plaintiff relating to exposure to
10 asbestos;

11 (c) If the plaintiff's asbestos trust claim is based on exposure to
12 asbestos carried on the person or clothing of another individual, produce
13 all trust claim materials submitted by the other individual to any
14 asbestos trust if the materials are available to the plaintiff or
15 plaintiff's counsel or other authorized representatives; and

16 (d) Provide an affidavit certifying that any trust claim materials
17 provided under subdivisions (1)(b) and (1)(c) of this section are true
18 and complete.

19 (2) A plaintiff shall supplement the information, materials,
20 declarations, and affidavits required under subsection (1) of this
21 section within thirty days after the plaintiff supplements an asbestos
22 trust claim, receives additional trust claim materials or information
23 related to an asbestos trust claim, or files an additional trust claim.

24 Sec. 4. (1) Not less than sixty days before trial of an asbestos
25 action, if a defendant believes the plaintiff has not filed all asbestos
26 trust claims as required by section 3 of this act, the defendant may move
27 the court for an order to require the plaintiff to file additional trust
28 claims. The motion shall identify the additional asbestos trust claims
29 the defendant believes the plaintiff is eligible to file.

30 (2) If the court determines that there is a sufficient basis for the
31 plaintiff to file an asbestos trust claim identified by the defendant,

1 the court shall stay the asbestos action until the plaintiff files the
2 asbestos trust claim and produces all related trust claim materials and
3 an affidavit that all such trust claim materials are true and complete.
4 The court shall not set the asbestos action for trial earlier than sixty
5 days after the plaintiff complies with this section.

6 Sec. 5. (1) Trust claim materials and trust governance documents
7 are admissible as evidence in an asbestos action and are presumed to be
8 relevant and authentic. A claim of privilege shall not apply to trust
9 claim materials or trust governance documents.

10 (2) A defendant in an asbestos action may seek discovery from an
11 asbestos trust. The plaintiff may not claim privilege or confidentiality
12 to bar discovery of trust claim materials or trust governance documents
13 and shall provide consent or any other expression of permission that may
14 be required by the asbestos trust to release information and materials
15 sought by a defendant.

16 Sec. 6. In an asbestos action in which damages are awarded and
17 setoffs are permitted under applicable law, a defendant is entitled to a
18 setoff in the amount the plaintiff has received from an asbestos trust
19 and, for trust claims not yet paid as of the date of entry of judgment,
20 the amount the plaintiff will receive as specified in the asbestos trust
21 governance documents. If multiple defendants are found liable for
22 damages, the court shall distribute the amount of setoff proportionally
23 between the defendants according to the liability of each defendant.

24 Sec. 7. The Asbestos Trust Claims Transparency Act applies to all
25 asbestos actions filed on or after the effective date of this act.