

# SENATE BILL NO. 386

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

1611S.01H

KRISTINA MARTIN, Secretary

## AN ACT

To amend chapter 537, RSMo, by adding thereto seven new sections relating to actions for damages due to exposure to asbestos.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 537, RSMo, is amended by adding thereto  
2 seven new sections, to be known as sections 537.880, 537.882,  
3 537.884, 537.886, 537.888, 537.890, and 537.892, to read as  
4 follows:

537.880. 1. The provisions of sections 537.880 to  
2 537.892 shall apply to asbestos actions filed on or after  
3 August 28, 2023, and to asbestos actions filed before August  
4 28, 2023, unless the trial date in the asbestos action was  
5 set before January 1, 2023, and the trial will begin on or  
6 before December 1, 2023.

7 2. The provisions of sections 537.880 to 537.890 shall  
8 not apply to asbestos actions filed by or on behalf of any  
9 paid, volunteer, or retired firefighter, paramedic, or  
10 emergency medical technician.

11 3. As used in sections 537.880 to 537.892, the  
12 following terms shall mean, unless the context clearly  
13 requires otherwise:

14 (1) "Asbestos action", any claim for damages or other  
15 relief presented in a civil action arising out of, based on,  
16 or related to the health effects of exposure to asbestos and  
17 any derivative claim made by or on behalf of a person

18 exposed to asbestos or a representative, spouse, parent,  
19 child, or other relative of that person;

20 (2) "Asbestos trust", a government-approved or court-  
21 approved trust, qualified settlement fund, compensation  
22 fund, or claims facility created as a result of an  
23 administrative or legal action or a court-approved  
24 bankruptcy, or created under 11 U.S.C. Section 524(g), 11  
25 U.S.C. Section 1121(a), or other applicable provision of law  
26 that is intended to provide compensation to claimants  
27 arising out of, based on, or related to the health effects  
28 of exposure to asbestos;

29 (3) "Asbestos trust claim", any claim for compensation  
30 by an exposed person or the exposed person's representative  
31 against any asbestos trust;

32 (4) "Claimant", any person bringing an asbestos action  
33 or asserting an asbestos trust claim, including a personal  
34 representative if the asbestos action or asbestos trust  
35 claim is brought by an estate, or a conservator or next  
36 friend if the asbestos action or asbestos trust claim is  
37 brought on behalf of a minor or disabled person, as the  
38 terms "minor" and "disabled person" are defined in section  
39 475.010;

40 (5) "Exposed person", any person whose exposure to  
41 asbestos or to asbestos-containing products is the basis for  
42 an asbestos action or an asbestos trust claim;

43 (6) "Trust claim materials", a final executed proof of  
44 claim and all documents and information, including copies of  
45 electronic data and emails, submitted to or received from an  
46 asbestos trust by a claimant or a claimant's representative,  
47 including claim forms and supplementary materials, proofs of  
48 claim, affidavits, depositions and trial testimony of the  
49 claimant and others knowledgeable about the claimant's

50 exposure history, work history, exposure allegations,  
51 medical and health records, all documents that reflect the  
52 status of a claim against an asbestos trust, and if the  
53 asbestos trust claim has settled, all documents relating to  
54 the settlement of the asbestos trust claim;

55 (7) "Trust governance document", all documents that  
56 relate to eligibility and payment levels, including claims  
57 payment matrices, trust distribution procedures, or plans  
58 for reorganization for an asbestos trust.

537.882. 1. Within thirty days after an asbestos  
2 action is filed if the asbestos action was filed on or after  
3 August 28, 2023, or within thirty days of August 28, 2023,  
4 for an asbestos action that was filed before August 28,  
5 2023, and is subject to the provisions of sections 537.880  
6 to 537.892, the claimant shall:

7 (1) Provide the court and parties with a sworn  
8 statement signed by the claimant and claimant's counsel  
9 indicating that an investigation has been conducted and that  
10 all asbestos trust claims that can be made by the claimant  
11 or any person on the claimant's behalf have been completed  
12 and filed. The sworn statement shall indicate whether there  
13 has been a request to defer, delay, suspend, toll, withdraw,  
14 or otherwise alter the standing of any asbestos trust claim,  
15 and provide the status and disposition of each asbestos  
16 trust claim. A deferral or placeholder claim that is  
17 missing necessary documentation for the trust to pay the  
18 claim does not meet the requirements of this section;

19 (2) Provide all parties with all trust claim materials  
20 from all law firms connected to the claimant in relation to  
21 exposure to asbestos, including trust claim materials that  
22 relate to conditions other than those that are the basis for  
23 the asbestos action. Documents provided pursuant to this

24 subdivision shall include an affidavit from the claimant  
25 certifying that the trust claim materials are true and  
26 complete; and

27 (3) Produce all available asbestos trust claims filed  
28 by any individual other than the claimant if the claimant's  
29 asbestos trust claim is based on exposure to asbestos  
30 through that other individual and the materials are  
31 available to the claimant or claimant's counsel.

32 2. The claimant shall have a continuing duty to  
33 supplement the statement and materials required to be  
34 provided pursuant to subsection 1 of this section within  
35 thirty days after the claimant files an additional asbestos  
36 trust claim, supplements an existing asbestos trust claim,  
37 or receives additional trust claim materials related to any  
38 asbestos trust claim made against an asbestos trust.

39 3. The court shall dismiss the asbestos action without  
40 prejudice if the claimant fails to comply with the  
41 requirements of sections 537.880 to 537.890.

537.884. 1. Not less than sixty days before the date  
2 the trial in an asbestos action is set to commence, if the  
3 defendant believes the claimant has not filed all asbestos  
4 trust claims as required by section 537.882, the defendant  
5 may move the court for an order to require the claimant to  
6 file the additional asbestos trust claims the defendant  
7 believes the claimant is eligible to file.

8 2. Within ten days after the filing of the defendant's  
9 motion, the claimant shall:

10 (1) File the asbestos trust claims and produce all  
11 related trust claim materials; or

12 (2) File a written response with the court stating why  
13 there is insufficient evidence for the claimant to file the  
14 asbestos trust claims.

15           3. Within ten days of the claimant filing a written  
16 response to the defendant's motion, the court shall  
17 determine if there is a sufficient basis for the claimant to  
18 file the asbestos trust claim identified in the defendant's  
19 motion.

20           4. If the court determines that there is a sufficient  
21 basis for the claimant to file an asbestos trust claim  
22 identified in the defendant's motion, the court shall order  
23 the claimant to file the asbestos trust claim and produce  
24 all related trust claim materials within ten days. An  
25 asbestos action shall not proceed to trial until at least  
26 ninety days after the claimant complies with the court's  
27 order.

537.886. 1. Trust claim materials and trust  
2 governance documents are presumed to be relevant and  
3 authentic, and are admissible in evidence in an asbestos  
4 action. No claims of privilege apply to trust claim  
5 materials or trust governance documents.

6           2. A defendant in an asbestos action may seek  
7 discovery against an asbestos trust. The claimant shall not  
8 claim privilege or confidentiality to bar discovery. The  
9 claimant shall provide consent or any other expression of  
10 permission that may be required by the asbestos trust to  
11 release information and materials sought by the defendant.

12           3. Trust claim materials that are sufficient to  
13 entitle a claim to consideration for payment under the  
14 applicable trust governance documents may be sufficient to  
15 support a jury finding that the claimant was exposed to  
16 products for which the trust was established to provide  
17 compensation and that such exposure was a substantial  
18 contributing factor in causing the claimant's injury that is  
19 at issue in the asbestos action.

20           4. The parties in the asbestos action may introduce at  
21 trial any trust claim materials or trust governance  
22 documents to prove, without limitation, alternative  
23 causation for the exposed person's claimed injury, death, or  
24 loss to person; to prove that the bankrupt entity is a joint  
25 tort-feasor, liable for the same injury or wrongful death  
26 for the purposes of section 537.060; or to prove issues  
27 relevant to an adjudication of the asbestos action, unless  
28 the exclusion of the trust claim material is otherwise  
29 required by the rules of evidence.

          537.888. 1. If a claimant proceeds to trial in an  
2 asbestos action before an asbestos trust claim is resolved,  
3 there is a rebuttable presumption that the claimant is  
4 entitled to, and will receive, the compensation specified in  
5 the trust governance documents applicable to his or her  
6 claim at the time of trial. The court shall take judicial  
7 notice that the trust governance documents specify  
8 compensation amounts and payment percentages and shall  
9 establish an attributed value to the claimant's asbestos  
10 trust claims.

11           2. In an asbestos action in which damages are awarded  
12 and setoffs are permitted, a defendant is entitled to a  
13 setoff or credit in the amount of the actual payment  
14 received by the claimant from the asbestos trust and the  
15 amount of the valuation established under subsection 1 of  
16 this section. If multiple defendants are found liable for  
17 damages, the court shall distribute the amount of setoff or  
18 credit proportionally between the defendants, according to  
19 the liability of each defendant.

          537.890. 1. If, subsequent to obtaining a judgment in  
2 an asbestos action, a claimant files an additional asbestos  
3 trust claim with, or submits an additional asbestos trust

4 claim to, an asbestos trust that was in existence at the  
5 time the claimant obtained the judgment, the claimant shall  
6 provide notice within ten days of such filing or submission  
7 to the defendant and the trial court from which the judgment  
8 was obtained. The trial court, upon the filing of a motion  
9 by a defendant or judgment debtor, has jurisdiction and  
10 shall reopen the judgment in the asbestos action and adjust  
11 the judgment by the amount of any asbestos trust payments  
12 obtained by the claimant after the initial judgment and  
13 order any other relief that the court considers just and  
14 proper.

15 2. A defendant or judgment debtor shall file any  
16 motion pursuant to this section within three years after the  
17 judgment was entered or taken.

537.892. 1. Within thirty days after an asbestos  
2 action is filed if the asbestos action was filed on or after  
3 August 28, 2023, or within thirty days of August 28, 2023,  
4 for an asbestos action that was filed before August 28,  
5 2023, and is subject to the provisions of sections 537.880  
6 to 537.892, the claimant shall file a sworn information form  
7 specifying the evidence that provides the basis for each  
8 claim against each defendant. The sworn information form  
9 shall include all of the following with specificity:

10 (1) The name, address, date of birth, marital status,  
11 occupation, smoking history, current and past worksites, and  
12 current and past employers of the exposed person, and any  
13 person through whom the exposed person was exposed to  
14 asbestos;

15 (2) Each person through whom the exposed person was  
16 exposed to asbestos and the exposed person's relationship to  
17 each person;

18           (3) Each person who is knowledgeable about each  
19 exposure;

20           (4) The manufacturer or seller of each asbestos or  
21 asbestos-containing product and the specific product  
22 involved in each exposure, including for any person through  
23 whom the exposed person was exposed to asbestos;

24           (5) The specific location and manner of each exposure,  
25 including for any person through whom the exposed person was  
26 exposed to asbestos;

27           (6) The beginning and ending dates of each exposure,  
28 the frequency and duration of each exposure, and the  
29 proximity of the asbestos-containing product or its use to  
30 the exposed person and any person through whom the exposed  
31 person was exposed to asbestos;

32           (7) The specific asbestos-related disease that is  
33 alleged;

34           (8) A certification that no prior asbestos actions  
35 have been made on the claimant's behalf or, if the claimant  
36 has filed prior asbestos actions, information as to the case  
37 name, case number, and court; and

38           (9) Any supporting documentation relating to the  
39 information required in this subsection.

40           2. A claimant's obligation to provide sworn  
41 information pursuant to subsection 1 of this section is in  
42 addition to any court ordered disclosures. Claimants have a  
43 continuing duty to supplement the information that is  
44 required to be disclosed in subsection 1 of this section  
45 within ten days after the claimant receives additional  
46 information that is required to be disclosed.

47           3. The court, on motion by a defendant, shall dismiss  
48 the asbestos action without prejudice as to any defendant



49 whose product or premises is not identified in the required  
50 disclosures set forth in subsection 1 of this section.

51 4. The court, on motion by a defendant, shall dismiss  
52 the asbestos action without prejudice if the claimant fails  
53 to comply with the requirements of this section.

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