

1 AN ACT relating to asbestos bankruptcy trust claims and declaring an emergency.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 4 of this Act, unless the context requires otherwise:*

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

11 *(2) "Asbestos trust" means a government-approved or court-approved trust,*  
12 *qualified settlement fund, compensation fund, or claims facility created as a*  
13 *result of an administrative or legal action, a court-approved bankruptcy, or*  
14 *reorganization plan established pursuant to 11 U.S.C. sec. 524(g) or 11 U.S.C.*  
15 *sec. 1121(a) or other applicable provision of law, that is intended to provide*  
16 *compensation to claimants arising out of, based on, or related to the health*  
17 *effects of exposure to asbestos;*

18 *(3) "Trust claims materials" means a final executed proof of claim and all other*  
19 *documents and information related to a claim against an asbestos trust,*  
20 *including:*

21 *(a) Claims forms and supplementary materials;*

22 *(b) Affidavits;*

23 *(c) Depositions and trial testimony;*

24 *(d) Work history;*

25 *(e) Medical and health records;*

26 *(f) Documents reflecting the status of a claim against an asbestos trust; and*

27 *(g) If the asbestos trust claim has settled, all documents relating to the*

- 1                   settlement of the asbestos trust claim; and  
2     **(4) "Trust governance documents" means all documents that relate to eligibility and**  
3                   payment levels for an asbestos trust, including:  
4                   (a) Claims payment matrices;  
5                   (b) Trust distribution procedures; and  
6                   (c) Plans for reorganization.

7           ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
8 READ AS FOLLOWS:

- 9     **(1) Within thirty (30) days of filing an asbestos action in this state, the plaintiff shall:**  
10           (a) Provide all parties with a sworn statement indicating that an investigation  
11           of asbestos trust claims has been conducted and that all asbestos trust  
12           claims that can be made by the plaintiff have been completed and filed. The  
13           statement shall include the amount of any trust claim payment made or to be  
14           made to the plaintiff; the status and disposition of the claim; and whether  
15           there has been a request to defer, delay, withdraw, suspend or otherwise  
16           alter the standing of any claim;  
17           (b) Provide to all parties all trust claims materials for each asbestos trust claim  
18           that has been filed by the plaintiff or by anyone on the plaintiff's behalf  
19           against an asbestos trust, including any asbestos-related disease; and  
20           (c) If the plaintiff's asbestos trust claim is based on exposure to asbestos  
21           through another individual, produce all trust claim materials submitted by  
22           the other individual to any asbestos trust if the plaintiff is in possession of  
23           or legally entitled to obtain those trust claim materials.  
24     **(2) Within thirty (30) days of filing any additional asbestos trust claims or**  
25           supplements to an existing asbestos trust claim, or receiving any additional  
26           information or materials related to any claim or potential claim against an  
27           asbestos trust, the plaintiff shall provide to all parties a supplement to the sworn

1 statement containing all the updated information and materials required to be  
 2 provided pursuant to this section.

3 (3) If a court finds that a plaintiff failed to comply with this section, the court shall  
 4 extend the trial date in an asbestos action.

5 (4) (a) Trust claims materials and trust governance documents are presumed to be  
 6 relevant and authentic and are admissible in evidence. No claims of  
 7 privilege apply to any trust claims materials or trust governance documents.

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

13 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
 14 READ AS FOLLOWS:

15 (1) If, at least sixty (60) days before the start of trial, a defendant identifies an  
 16 asbestos trust claim not previously identified by the plaintiff that the defendant  
 17 reasonably believes the plaintiff can file, the defendant may move the court for an  
 18 order to require the plaintiff to file the asbestos trust claim. The defendant shall  
 19 produce or describe the documentation it possesses or is aware of in support of  
 20 the motion.

21 (2) Within ten (10) days of receiving the defendant's motion under subsection (1) of  
 22 this section, the plaintiff shall, for each asbestos trust claim identified by the  
 23 defendant, file one (1) of the following:

24 (a) The asbestos trust claim; or

25 (b) A written response with the court, either:

26 1. Setting forth the reasons why there is insufficient evidence for the  
 27 plaintiff to file the asbestos trust claim; or

1           2. Requesting a determination that the plaintiff's expenses or attorney's  
2           fees and expenses to prepare and file the asbestos trust claim identified  
3           in the defendant's motion exceed the plaintiff's reasonably anticipated  
4           recovery from the trust.

5       (3) (a) If the court determines that there is a sufficient basis for the plaintiff to file  
6           the asbestos trust claim identified by a defendant, the court shall order the  
7           plaintiff to file the asbestos trust claim and shall stay the asbestos action  
8           until the plaintiff files the asbestos trust claim and provides all parties with  
9           all trust claims materials.

10       (b) If the court determines that the plaintiff's expenses or attorney's fees and  
11           expenses to prepare and file the asbestos trust claim identified in the  
12           defendant's motion exceed the plaintiff's reasonably anticipated recovery  
13           from the asbestos trust, the court shall stay the asbestos action until the  
14           plaintiff files with the court and provides all parties with a verified  
15           statement of the plaintiff's history of exposure, usage or other connection to  
16           asbestos covered by the asbestos trust.

17       (c) A trial for an asbestos action shall not commence any sooner than sixty (60)  
18           days after the plaintiff has complied with the requirements of this  
19           subsection.

20       (4) Trust claim materials that are sufficient to entitle a claim to consideration for  
21           payment under the applicable trust governance documents are sufficient to  
22           support a jury finding that the plaintiff was exposed to products for which the  
23           asbestos trust was established to provide compensation and that the exposure was  
24           a substantial factor in causing the plaintiff's injury that is at issue in the asbestos  
25           action.

26       (5) If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim  
27           is resolved, there is a rebuttable presumption that the plaintiff will receive the

1        compensation specified in the trust governance document applicable to his or her  
2        claim at the time of trial. The court shall take judicial notice that the trust  
3        governance document specifies compensation amounts and payment percentages  
4        and shall establish an attributed value to the plaintiff's asbestos trust claim. A  
5        defendant that is found liable for damages shall receive a setoff or credit in this  
6        amount. If multiple defendants are found liable for damages, the court shall  
7        distribute the amount of setoff or credit proportionally between the defendants,  
8        according to the liability of each defendant. This section shall not affect  
9        apportionment of fault with respect to settling nonparties at trial.

10        ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
11 READ AS FOLLOWS:

12        (1) If after obtaining a judgment in an asbestos claim, the plaintiff, or a person  
13        acting on the plaintiff's behalf, files a new asbestos trust claim against an  
14        asbestos trust that was in existence at the time the judgment was obtained, the  
15        court, on motion by a defendant in the previous asbestos claim or a judgment  
16        debtor seeking sanctions or other relief:

17        (a) Has jurisdiction to reopen the judgment in the previous asbestos claim;

18        (b) May adjust the judgment by the amount of any new asbestos trust payments  
19        obtained by the plaintiff; and

20        (c) May order any other relief to the parties that the court considers just and  
21        proper.

22        (2) Any motion for sanctions or other relief under this section shall be filed within  
23        one (1) year of the judgment on the previous asbestos claim being entered.

24        ➔Section 5. Sections 1 to 4 of this Act may be cited as the Asbestos Bankruptcy  
25 Trust Claims Transparency Act.

26        ➔Section 6. Whereas The United States Supreme Court in Amchem Products,  
27 Inc. v. Windsor, 521 U.S. 591, 598 (1997), described the asbestos litigation as a crisis;

1 and over one hundred employers have declared bankruptcy at least partially due to  
2 asbestos-related liability; and these bankruptcies have resulted in a search for more  
3 solvent companies, resulting in over eight thousand five hundred companies being named  
4 as asbestos defendants, including many small- and medium-sized companies, in industries  
5 that cover eighty-five percent of the United States economy; and asbestos claimants often  
6 seek compensation for alleged asbestos-related conditions from solvent defendants in  
7 civil actions and from trusts or claims facilities formed in asbestos bankruptcy  
8 proceedings; and there is limited coordination and transparency between these two paths  
9 to recovery; and an absence of transparency between the asbestos bankruptcy trust claim  
10 and the civil court systems has resulted in the suppression of evidence in asbestos actions  
11 and potential fraud; an emergency is declared to exist, and this Act takes effect upon its  
12 passage and approval by the Governor or upon its otherwise becoming a law.