

1 **ASBESTOS LITIGATION TRANSPARENCY ACT**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad R. Wilson**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts transparency requirements with respect to asbestos bankruptcy trust
10 claims in civil asbestos actions.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ requires asbestos plaintiffs to investigate and file all asbestos bankruptcy trust
14 claims and provide parties with all trust claims materials after commencement of an
15 asbestos-related lawsuit.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 ENACTS:

22 **78B-6-2001**, Utah Code Annotated 1953

23 **78B-6-2002**, Utah Code Annotated 1953

24 **78B-6-2003**, Utah Code Annotated 1953

25 **78B-6-2004**, Utah Code Annotated 1953

26 **78B-6-2005**, Utah Code Annotated 1953

27 **78B-6-2006**, Utah Code Annotated 1953

28 **78B-6-2007**, Utah Code Annotated 1953

29 **78B-6-2008**, Utah Code Annotated 1953

30 78B-6-2009, Utah Code Annotated 1953

31 78B-6-2010, Utah Code Annotated 1953

32

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **78B-6-2001** is enacted to read:

35 **Part 20. Asbestos Bankruptcy Trust Claims Transparency Act**

36 **78B-6-2001. Title.**

37 This part is referred to as the "Asbestos Bankruptcy Trust Claims Transparency Act."

38 Section 2. Section **78B-6-2002** is enacted to read:

39 **78B-6-2002. Legislative findings -- Purpose.**

40 (1) The Legislature finds that:

41 (a) approximately 100 employers have declared bankruptcy at least partially due to
42 asbestos-related liability;

43 (b) these bankruptcies have resulted in a search for more solvent companies by
44 claimants, resulting in over 10,000 companies being named as asbestos defendants, including
45 many small- and medium-sized companies, in industries that cover 85% of the United States
46 economy;

47 (c) scores of trusts have been established in asbestos-related bankruptcy proceedings to
48 form a multi-billion dollar asbestos bankruptcy trust compensation system outside of the tort
49 system, and new asbestos trusts continue to be formed;

50 (d) asbestos claimants often seek compensation from solvent defendants in civil
51 actions and trusts or claims facilities formed in asbestos-related bankruptcy proceedings;

52 (e) there is limited coordination and transparency between these two paths to recovery,
53 which has resulted in the suppression of evidence in asbestos actions and potential fraud; and

54 (f) justice is promoted by transparency with respect to asbestos bankruptcy trust claims
55 in civil asbestos actions.

56 (2) This part is enacted to:

57 (a) provide transparency with respect to asbestos bankruptcy trust claims in civil

58 asbestos actions; and

59 (b) reduce the opportunity for fraud or suppression of evidence in asbestos actions.

60 Section 3. Section **78B-6-2003** is enacted to read:

61 **78B-6-2003. Definitions.**

62 As used in this part:

63 (1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite
64 asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform
65 amphibole minerals, and any of these minerals that have been chemically treated or altered,
66 including all minerals defined as asbestos in 29 C.F.R. Sec. 1910 at the time the asbestos action
67 is filed.

68 (2) (a) "Asbestos action" means a claim for damages or other civil or equitable relief
69 presented in a civil action resulting from, based on, or related to:

70 (i) the health effects of exposure to asbestos, including:

71 (A) loss of consortium;

72 (B) wrongful death;

73 (C) mental or emotional injury;

74 (D) risk or fear of disease or other injury; and

75 (E) costs of medical monitoring or surveillance; and

76 (ii) any other derivative claim made by or on behalf of a person exposed to asbestos or
77 a representative, spouse, parent, child, or other relative of that person.

78 (b) "Asbestos action" does not include a claim for workers' compensation or veterans'
79 benefits.

80 (3) "Asbestos trust" means a:

81 (a) government-approved or court-approved trust that is intended to provide
82 compensation to claimants arising out of, based on, or related to the health effects of exposure
83 to asbestos or asbestos-containing products;

84 (b) qualified settlement fund that is intended to provide compensation to claimants
85 arising out of, based on, or related to the health effects of exposure to asbestos or

86 asbestos-containing products;

87 (c) compensation fund or claims facility created as a result of an administrative or legal
88 action that is intended to provide compensation to claimants arising out of, based on, or related
89 to the health effects of exposure to asbestos or asbestos-containing products;

90 (d) court-approved bankruptcy that is intended to provide compensation to claimants
91 arising out of, based on, or related to the health effects of exposure to asbestos or
92 asbestos-containing products; or

93 (e) plan of reorganization or trust pursuant to 11 U.S.C. Sec. 524(g) or 11 U.S.C. Sec.
94 1121(a) or other applicable provision of law that is intended to provide compensation to
95 claimants arising out of, based on, or related to the health effects of exposure to asbestos or
96 asbestos-containing products.

97 (4) "Plaintiff" means:

98 (a) the person bringing the asbestos action, including a personal representative if the
99 asbestos action is brought by an estate; or

100 (b) a conservator or next friend if the asbestos action is brought on behalf of a minor or
101 legally incapacitated individual.

102 (5) "Trust claims materials" means a final executed proof of claim and all other
103 documents and information related to a claim against an asbestos trust, including:

104 (a) claims forms and supplementary materials;

105 (b) affidavits;

106 (c) depositions and trial testimony;

107 (d) work history;

108 (e) medical and health records;

109 (f) documents reflecting the status of a claim against an asbestos trust; and

110 (g) all documents relating to the settlement of the trust claim if the trust claim has
111 settled.

112 (6) "Trust governance documents" means all documents that relate to eligibility and
113 payment levels, including:

114 (a) claims payment matrices; and
115 (b) trust distribution procedures or plans for reorganization for an asbestos trust.
116 (7) "Veterans' benefits" means a program for benefits in connection with military
117 service administered by the Veterans Administration under United States Code, Title 38,
118 Veterans Benefits.

119 (8) (a) "Workers' compensation" means a program administered by the United States or
120 a state to provide benefits, funded by a responsible employer or the employer's insurance
121 carrier, for occupational diseases or injuries or for disability or death caused by occupational
122 diseases or injuries.

123 (b) "Workers' compensation" includes the Longshore and Harbor Workers'
124 Compensation Act, 33 U.S.C. Sec. 901 et seq., and Federal Employees' Compensation Act, 5
125 U.S.C. Sec. 8101 et seq.

126 (c) "Workers' compensation" does not include the Federal Employers' Liability Act, 45
127 U.S.C. Sec. 51 et seq.

128 Section 4. Section **78B-6-2004** is enacted to read:

129 **78B-6-2004. Required disclosures by plaintiff.**

130 (1) For each asbestos action filed in this state, the plaintiff shall provide all parties with
131 a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff or by
132 anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions
133 other than those that are the basis for the asbestos action or that potentially could be filed by the
134 plaintiff against an asbestos trust.

135 (a) The sworn statement shall be provided no later than 120 days prior to the date set
136 for trial for the asbestos action.

137 (b) For each asbestos trust claim or potential asbestos trust claim identified in the
138 sworn statement, the statement shall include the name, address and contact information for the
139 asbestos trust, the amount claimed or to be claimed by the plaintiff, the date the plaintiff filed
140 the claim, the disposition of the claim and whether there has been a request to defer, delay,
141 suspend, or toll the claim.

142 (c) The sworn statement shall include an attestation from the plaintiff, under penalties
143 of perjury, that the sworn statement is complete and based on a good faith investigation of all
144 potential claims against asbestos trusts.

145 (2) The plaintiff shall make available to all parties all trust claims materials for each
146 asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf
147 against an asbestos trust, including any asbestos-related disease.

148 (3) The plaintiff shall supplement the information and materials provided pursuant to
149 this section within 90 days after the plaintiff files an additional asbestos trust claim,
150 supplements an existing asbestos trust claim or receives additional information or materials
151 related to any claim or potential claim against an asbestos trust.

152 (4) Failure by the plaintiff to make available to all parties all trust claims materials as
153 required by this part shall constitute grounds for the court to extend the trial date in an asbestos
154 action.

155 Section 5. Section **78B-6-2005** is enacted to read:

156 **78B-6-2005. Discovery -- Use of materials.**

157 (1) Trust claims materials and trust governance documents are presumed to be relevant
158 and authentic and are admissible in evidence. Claims of privilege may not apply to any trust
159 claims materials or trust governance documents.

160 (2) A defendant in an asbestos action may seek discovery from an asbestos trust. The
161 plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent
162 or other expression of permission that may be required by the asbestos trust to release
163 information and materials sought by a defendant.

164 Section 6. Section **78B-6-2006** is enacted to read:

165 **78B-6-2006. Scheduling trial -- Stay of action.**

166 (1) A court shall stay an asbestos action if the court finds that the plaintiff has failed to
167 make the disclosures required under Section [78B-6-2004](#) within 120 days prior to the trial date.

168 (2) If, in the disclosures required by Section [78B-6-2004](#), a plaintiff identifies a
169 potential asbestos trust claim, the judge may stay the asbestos action until the plaintiff files the

170 asbestos trust claim and provides all parties with all trust claims materials for the claim. The
171 plaintiff shall also state whether there has been a request to defer, delay, suspend, or toll the
172 claim against the asbestos trust.

173 Section 7. Section **78B-6-2007** is enacted to read:

174 **78B-6-2007. Identification of additional or alternative asbestos trusts by**
175 **defendant.**

176 (1) Not less than 90 days before trial, if a defendant identifies an asbestos trust claim
177 not previously identified by the plaintiff that the defendant reasonably believes the plaintiff can
178 file, the defendant shall meet and confer with plaintiff to discuss why defendant believes
179 plaintiff has an additional asbestos trust claim. The defendant may move the court for an order
180 to require the plaintiff to file the asbestos trust claim after the meeting. The defendant shall
181 produce or describe the documentation it possesses or is aware of in support of the motion.

182 (2) Within 10 days of receiving the defendant's motion under Subsection (1), the
183 plaintiff shall, for each asbestos trust claim identified by the defendant, do one of the
184 following:

185 (a) file the asbestos trust claim;

186 (b) file a written response with the court setting forth the reasons why there is
187 insufficient evidence for the plaintiff to file the asbestos trust claim; or

188 (c) file a written response with the court requesting a determination that the plaintiff's
189 expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified
190 in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the trust.

191 (3) (a) If the court determines that there is a sufficient basis for the plaintiff to file the
192 asbestos trust claim identified by the defendant, the court shall order the plaintiff to file the
193 asbestos trust claim and shall stay the asbestos action until the plaintiff files the asbestos trust
194 claim and provides all parties with all trust claims materials no later than 30 days before trial.

195 (b) If the court determines that the plaintiff's expenses or attorney's fees and expenses
196 to prepare and file the asbestos trust claim identified in the defendant's motion exceed the
197 plaintiff's reasonably anticipated recovery from the asbestos trust, the court shall stay the

198 asbestos action until the plaintiff files with the court and provides all parties with a verified
199 statement of the plaintiff's history of exposure, usage or other connection to asbestos covered
200 by the asbestos trust.

201 Section 8. Section **78B-6-2008** is enacted to read:

202 **78B-6-2008. Valuation of asbestos trust claims.**

203 If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is
204 resolved, the filing of the asbestos trust claim may be considered as relevant and admissible
205 evidence.

206 Section 9. Section **78B-6-2009** is enacted to read:

207 **78B-6-2009. Failure to provide information -- Sanctions.**

208 A plaintiff who fails to provide all of the information required under this part is subject
209 to sanctions as provided in the Utah Rules of Civil Procedure and any other relief for the
210 defendants that the court considers just and proper.

211 Section 10. Section **78B-6-2010** is enacted to read:

212 **78B-6-2010. Application.**

213 This part applies to asbestos actions filed on or after May 10, 2016.