



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

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



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.