

**Representative Brad R. Wilson** proposes the following substitute bill:

**ASBESTOS LITIGATION TRANSPARENCY ACT**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad R. Wilson**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

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

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

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

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

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

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

34 **78B-6-2001. Title.**

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

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

37 **78B-6-2002. Legislative findings -- Purpose.**

38 (1) The Legislature finds that:

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

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

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

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

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

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

54 (2) This part is enacted to:

55 (a) provide transparency with respect to asbestos bankruptcy trust claims in civil  
56 asbestos actions; and

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

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

59 **78B-6-2003. Definitions.**

60 As used in this part:

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

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

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

69 (A) loss of consortium;

70 (B) wrongful death;

71 (C) mental or emotional injury;

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

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

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

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

78 (3) "Asbestos trust" means a:

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

82 (b) qualified settlement fund that is intended to provide compensation to claimants  
83 arising out of, based on, or related to the health effects of exposure to asbestos or  
84 asbestos-containing products;

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

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

91 (e) plan of reorganization or trust pursuant to 11 U.S.C. Sec. 524(g) or 11 U.S.C. Sec.  
92 1121(a) or other applicable provision of law that is intended to provide compensation to  
93 claimants arising out of, based on, or related to the health effects of exposure to asbestos or  
94 asbestos-containing products.

95 (4) "Plaintiff" means:

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

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

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

102 (a) claims forms and supplementary materials;

103 (b) affidavits;

104 (c) depositions and trial testimony;

105 (d) work history;

106 (e) medical and health records;

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

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

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

112 (a) claims payment matrices; and

113 (b) trust distribution procedures or plans for reorganization for an asbestos trust.

114 (7) "Veterans' benefits" means a program for benefits in connection with military  
115 service administered by the Veterans' Administration under United States Code, Title 38,  
116 Veterans' Benefits.

117 (8) (a) "Workers' compensation" means a program administered by the United States or  
118 a state to provide benefits, funded by a responsible employer or the employer's insurance

119 carrier, for occupational diseases or injuries or for disability or death caused by occupational  
120 diseases or injuries.

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

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

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

127 **78B-6-2004. Required disclosures by plaintiff.**

128 (1) Within 30 days after an asbestos action is filed, or within 30 days after May 10,  
129 2016, whichever is later, and before any evidence is preserved by deposition in the asbestos  
130 action, the plaintiff shall do all of the following:

131 (a) provide the court and parties with a sworn statement signed by the plaintiff and the  
132 plaintiff's counsel, under penalties of perjury, indicating:

133 (i) that an investigation of all asbestos trust claims has been conducted, and that all  
134 asbestos trust claims that can be made by the plaintiff or any person on the plaintiff's behalf  
135 have been filed;

136 (ii) whether there has been a request to defer, delay, suspend, or toll any asbestos trust  
137 claim; and

138 (iii) the disposition of each asbestos trust claim;

139 (b) provide all parties with all trust claims materials, including:

140 (i) trust claims materials that relate to conditions other than those that are the basis for  
141 the asbestos action; and

142 (ii) all trust claims materials from all law firms connected to the plaintiff in relation to  
143 exposure to asbestos, including anyone at a law firm involved in the asbestos action, any  
144 referring law firm, and any other firm that has filed an asbestos trust claim for the plaintiff or  
145 on the plaintiff's behalf; and

146 (c) produce all trust claims materials submitted by another individual to any asbestos  
147 trusts if:

148 (i) the plaintiff's asbestos trust claim is based on exposure to asbestos through the other  
149 individual; and

- 150 (ii) the materials are available to the plaintiff or the plaintiff's counsel.  
151 (2) The plaintiff shall supplement the information and materials required under  
152 Subsection (1) within 30 days after the plaintiff or a person on the plaintiff's behalf:  
153 (a) supplements an existing asbestos trust claim;  
154 (b) receives additional information or materials related to an asbestos trust claim; or  
155 (c) files an additional asbestos trust claim.  
156 (3) The court may dismiss the asbestos action if the plaintiff fails to comply with this  
157 section.  
158 (4) An asbestos action may not proceed to trial until at least 180 days after the  
159 requirements of Subsection (1) are met.

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

161 **78B-6-2005. Identification of additional asbestos trust claims by defendant.**

162 (1) (a) A defendant may file a motion requesting a stay of the proceedings on or before  
163 the later of 60 days before the date that the trial in the action is set to commence or 15 days  
164 after the defendant first obtains information that could support additional trust claims by the  
165 plaintiff.

166 (b) The motion described in Subsection (1)(a) shall identify the additional asbestos  
167 trust claims the defendant believes the plaintiff can file and include information supporting the  
168 additional asbestos trust claims.

169 (2) Within 10 days of receiving the defendant's motion described in Subsection (1)(a),  
170 the plaintiff shall:

171 (a) file the asbestos trust claims;

172 (b) file a written response with the court stating why there is insufficient evidence for  
173 the plaintiff to file the asbestos trust claims; or

174 (c) file a written response with the court requesting a determination that the cost to file  
175 the asbestos trust claims exceeds the plaintiff's reasonably anticipated recovery.

176 (3) (a) If the court determines that there is a sufficient basis for the plaintiff to file an  
177 asbestos trust claim identified in the motion to stay, the court shall stay the asbestos action until  
178 the plaintiff files the asbestos trust claim and produces all related trust claims materials.

179 (b) If the court determines that the cost of submitting an asbestos trust claim exceeds  
180 the plaintiff's reasonable anticipated recovery, the court shall stay the asbestos action until the

181 plaintiff files with the court and provides all parties with a verified statement of the plaintiff's  
182 history of exposure, usage, or other connection to asbestos covered by that asbestos trust.

183 (4) Not less than 60 days after the plaintiff provides the documentation required under  
184 this section, the court may schedule the asbestos action for trial.

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

186 **78B-6-2006. Discovery -- Use of materials -- Trust record.**

187 (1) (a) Trust claims materials and trust governance documents are presumed to be  
188 relevant and authentic and are admissible in evidence in an asbestos action.

189 (b) A claim of privilege does not apply to any trust claims materials or trust governance  
190 documents.

191 (2) (a) A defendant in an asbestos action may seek discovery from an asbestos trust.

192 (b) The plaintiff may not claim privilege or confidentiality to bar discovery and shall  
193 provide consent or other expression of permission that may be required by the asbestos trust to  
194 release information and materials sought by a defendant.

195 (3) Trust claim materials that are sufficient to entitle a claim to consideration for  
196 payment under the applicable trust governance documents may be sufficient to support a jury  
197 finding that the plaintiff was exposed to products for which the trust was established to provide  
198 compensation and that the exposure may be a substantial factor in causing the plaintiff's injury  
199 that is at issue in the asbestos action.

200 (4) Not less than 30 days before trial in an asbestos action, the court shall enter into the  
201 record a document that identifies every asbestos trust claim made by the plaintiff or on the  
202 plaintiff's behalf.

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

204 **78B-6-2007. Failure to provide information -- Sanctions.**

205 (1) On the motion of a defendant or judgment debtor seeking sanctions or other relief  
206 in an asbestos action, the court may impose any sanction provided by court rule or a law of this  
207 state, including vacating a judgment rendered in the action, for a plaintiff's failure to comply  
208 with the disclosure requirements of this part.

209 (2) The trial court, on motion by a defendant or judgment debtor seeking sanctions or  
210 other relief, has jurisdiction to reopen the judgment in an asbestos action, adjust the judgment  
211 by the amount of any subsequent asbestos trust payments obtained by the plaintiff, and order

212 any other relief to the parties that the court considers just and proper if:

213 (a) the plaintiff or a person on the plaintiff's behalf files an asbestos trust claim after  
214 the plaintiff obtains a judgment in an asbestos action; and

215 (b) the asbestos trust was in existence at the time the plaintiff obtained the judgment.

216 (3) A defendant or judgment debtor shall file any motion under this section within a  
217 reasonable time, not to exceed 3 years after the judgment was entered.

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

219 **78B-6-2008. Application.**

220 (1) This part applies to asbestos actions filed on or after May 10, 2016, as well as any  
221 pending asbestos actions in which trial has not commenced as of May 10, 2016.

222 (2) This part may only be applied prospectively if the application of a provision in this  
223 part would unconstitutionally affect a vested right.