

HB0403S02 compared with HB0403S01

~~deleted text~~ shows text that was in HB0403S01 but was deleted in HB0403S02.

inserted text shows text that was not in HB0403S01 but was inserted into HB0403S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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

HB0403S02 compared with HB0403S01

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

78B-6-2005, Utah Code Annotated 1953

78B-6-2006, Utah Code Annotated 1953

78B-6-2007, Utah Code Annotated 1953

78B-6-2008, Utah Code Annotated 1953

78B-6-2009, Utah Code Annotated 1953

78B-6-2010, Utah Code Annotated 1953

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

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

Part 20. Asbestos Bankruptcy Trust Claims Transparency Act

78B-6-2001. Title.

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

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

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

(1) The Legislature finds that:

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

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

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

(d) asbestos claimants often seek compensation from solvent defendants in civil

HB0403S02 compared with HB0403S01

actions and trusts or claims facilities formed in asbestos-related bankruptcy proceedings;

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

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

(2) This part is enacted to:

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

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

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

78B-6-2003. Definitions.

As used in this part:

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

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

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

(A) loss of consortium;

(B) wrongful death;

(C) mental or emotional injury;

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

(E) costs of medical monitoring or surveillance; and

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

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

(3) "Asbestos trust" means a:

(a) government-approved or court-approved trust that is intended to provide

HB0403S02 compared with HB0403S01

compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;

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

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

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

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

(4) "Plaintiff" means:

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

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

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

(a) claims forms and supplementary materials;

(b) affidavits;

(c) depositions and trial testimony;

(d) work history;

(e) medical and health records;

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

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

(6) "Trust governance documents" means all documents that relate to eligibility and

HB0403S02 compared with HB0403S01

payment levels, including:

(a) claims payment matrices; and

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

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

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

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

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

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

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

(1) ~~{Within 30 days after an}~~For each asbestos action ~~{is filed, or within 30 days after May 10, 2016, whichever is later, and before any evidence is preserved by deposition in the asbestos action}~~ filed in this state, the plaintiff shall ~~{do all of the following:~~

~~—— (a) } provide {the court and} all parties with a sworn statement {signed by the plaintiff and the plaintiff's counsel, under penalties of perjury, indicating:~~

~~—— (i) that an investigation of all asbestos trust claims has been conducted, and that} identifying all asbestos trust claims that ~~{can be made}~~ have been filed by the plaintiff or ~~{any person}~~ by anyone on the plaintiff's behalf ~~{ have been filed;~~~~

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

~~—— (iii) the disposition of each asbestos trust claim;~~

~~—— (b) provide all parties with all trust claims materials}, including {:~~

~~—— (i) trust} claims ~~{materials that relate to}~~ with respect to asbestos-related conditions other than those that are the basis for the asbestos action ~~{; and~~~~

HB0403S02 compared with HB0403S01

~~(ii) or that potentially could be filed by the plaintiff against an asbestos trust.~~

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

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

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

~~(2) The plaintiff shall make available to all parties all trust claims materials ~~from all law firms connected to the plaintiff in relation to exposure to asbestos, including anyone at a law firm involved in the asbestos action, any referring law firm, and any other firm that has filed an~~ for each asbestos trust claim ~~for~~ that has been filed by the plaintiff or by anyone on the plaintiff's behalf; ~~and~~~~

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

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

~~(ii) the materials are available to the plaintiff or the plaintiff's counsel.~~

~~(2) against an asbestos trust, including any asbestos-related disease.~~

~~(3) The plaintiff shall supplement the information and materials ~~required under Subsection (1)~~ provided pursuant to this section within ~~30~~ 90 days after the plaintiff ~~or a person on the plaintiff's behalf.~~~~

~~(a) files an additional asbestos trust claim, supplements an existing asbestos trust claim;~~

~~(b) or receives additional information or materials related to ~~an asbestos trust claim;~~ or~~

~~(c) files an additional asbestos trust claim.~~

~~(3) The court may dismiss the asbestos action if the plaintiff fails to comply with this~~

HB0403S02 compared with HB0403S01

section:

~~— (4) An any claim or potential claim against an asbestos trust.~~

~~(4) Failure by the plaintiff to make available to all parties all trust claims materials as required by this part shall constitute grounds for the court to extend the trial date in an asbestos action ~~may not proceed to trial until at least 180 days after the requirements of Subsection (1) are met~~.~~

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

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

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

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

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

~~— (a) file the asbestos trust claims;~~

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

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

~~— (3) (a) If the court determines that there is a sufficient basis for the plaintiff to file an asbestos trust claim identified in the motion to stay, the court shall stay the asbestos action until the plaintiff files the asbestos trust claim and produces all related Discovery~~

~~-- Use of materials.~~

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

~~— (b) If the court determines that the cost of submitting or trust governance documents~~

~~(2) A defendant in an asbestos action may seek discovery from an asbestos trust ~~claim~~~~

HB0403S02 compared with HB0403S01

~~exceeds the plaintiff's reasonable anticipated recovery, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by that asbestos trust.~~

~~—— (4) Not less than 60 days after the plaintiff provides the documentation required under this section, the court may schedule the asbestos action for trial. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.~~

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

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

~~—— (1) (a) Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence in. Scheduling trial -- Stay of action.~~

~~(1) A court shall stay an asbestos action.~~

~~—— (b) A claim of privilege does not apply to any. if the court finds that the plaintiff has failed to make the disclosures required under Section 78B-6-2004 within 120 days prior to the trial date.~~

~~(2) If, in the disclosures required by Section 78B-6-2004, a plaintiff identifies a potential asbestos trust claim, the judge may stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials for trust governance documents.~~

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

~~—— (b) for the claim. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by. shall also state whether there has been a request to defer, delay, suspend or toll the claim against the asbestos trust to release information and materials sought by a defendant.~~

~~—— (3) Trust claim materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff was exposed to products for which the trust was established to provide compensation and that the exposure may be a substantial factor in causing the plaintiff's injury~~

HB0403S02 compared with HB0403S01

~~that is at issue in the asbestos action.~~

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

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

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

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

~~—— (2) The trial court, on motion by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to reopen the judgment in an asbestos action, adjust the judgment by the amount of any subsequent~~ **Identification of additional or alternative asbestos trusts by defendant.**

(1) Not less than 90 days before trial, if a defendant identifies an asbestos trust ~~{payments obtained}~~ **claim not previously identified by the plaintiff,** ~~and order any other relief to the parties that the court considers just and proper if:~~

~~—— (a) the plaintiff or a person on the plaintiff's behalf files an}~~ **that the defendant reasonably believes the plaintiff can file, the defendant shall meet and confer with plaintiff to discuss why defendant believes plaintiff has an additional asbestos trust claim. The defendant may move the court for an order to require the plaintiff to file the** ~~asbestos trust claim after the {plaintiff obtains a judgment in an asbestos action; and~~

~~—— (b) }~~ **meeting. The defendant shall produce or describe the documentation it possesses or is aware of in support of the motion.**

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

(a) file the asbestos trust ~~{was in existence at the time the plaintiff obtained the judgment.~~

~~—— (3) A defendant or judgment debtor shall file any motion under this section within a reasonable time, not to exceed 3 years after the judgment was entered}~~ **claim;**

HB0403S02 compared with HB0403S01

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

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

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

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

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

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

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

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

78B-6-2009. Failure to provide information; sanctions.

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

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

78B-6-2010. Application.

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

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

HB0403S02 compared with HB0403S01