

ASBESTOS LITIGATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses asbestos litigation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ recodifies Title 78B, Chapter 6, Part 20, Asbestos Bankruptcy Trust Claims Transparency Act, to Title 78B, Chapter 6, Part 24, Asbestos Litigation Requirements;
- ▶ requires certain disclosures after a complaint is filed in an asbestos action;
- ▶ addresses the dismissal of an action for failure to comply with a disclosure requirement;
- ▶ requires a prima facie showing of certain evidence in an asbestos action alleging a nonmalignant condition;
- ▶ establishes requirements for prima facie evidence in an asbestos action alleging a nonmalignant condition, including the disclosure of evidence at trial or to a jury;
- ▶ addresses the dismissal of an asbestos action when a plaintiff fails to make a prima facie showing;
- ▶ addresses the accrual of an asbestos action alleging a nonmalignant condition;
- ▶ addresses the liability of a defendant in an asbestos action in regard to a product liability claim; and



28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 ENACTS:

35 **78B-6-2402**, Utah Code Annotated 1953

36 **78B-6-2403**, Utah Code Annotated 1953

37 **78B-6-2404**, Utah Code Annotated 1953

38 **78B-6-2409**, Utah Code Annotated 1953

39 RENUMBERS AND AMENDS:

40 **78B-6-2401**, (Renumbered from 78B-6-2003, as last amended by Laws of Utah 2018,
41 Chapter 39)

42 **78B-6-2405**, (Renumbered from 78B-6-2004, as enacted by Laws of Utah 2016,
43 Chapter 385)

44 **78B-6-2406**, (Renumbered from 78B-6-2007, as enacted by Laws of Utah 2016,
45 Chapter 385)

46 **78B-6-2407**, (Renumbered from 78B-6-2005, as enacted by Laws of Utah 2016,
47 Chapter 385)

48 **78B-6-2408**, (Renumbered from 78B-6-2009, as enacted by Laws of Utah 2016,
49 Chapter 385)

50 REPEALS:

51 **78B-6-2001**, as enacted by Laws of Utah 2016, Chapter 385

52 **78B-6-2002**, as enacted by Laws of Utah 2016, Chapter 385

53 **78B-6-2006**, as enacted by Laws of Utah 2016, Chapter 385

54 **78B-6-2008**, as enacted by Laws of Utah 2016, Chapter 385

55 **78B-6-2010**, as enacted by Laws of Utah 2016, Chapter 385



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

58 Section 1. Section **78B-6-2401**, which is renumbered from Section 78B-6-2003 is

59 renumbered and amended to read:

60 **Part 24. Asbestos Litigation Requirements**

61 ~~[78B-6-2003].~~ **78B-6-2401. Definitions.**

62 As used in this part:

63 (1) "AMA guides" means the edition of the American Medical Association's Guides to
64 the Evaluation of Permanent Impairment in effect at the time of the performance of an
65 examination or test on the exposed individual.

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

71 (3) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by the
72 inhalation of asbestos fibers.

73 ~~[(2)]~~ (4) (a) "Asbestos action" means a claim for damages or other civil or equitable
74 relief presented in a civil action resulting from, based on, or related to:

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

76 (A) loss of consortium;

77 (B) wrongful death;

78 (C) mental or emotional injury;

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

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

81 (ii) any other derivative claim made by or on behalf of ~~[a person]~~ an individual

82 exposed to asbestos or a representative, spouse, parent, child, or other relative of that ~~[person]~~
83 individual.

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

86 ~~[(3)]~~ (5) "Asbestos trust" means a:

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

88 compensation to claimants arising out of, based on, or related to the health effects of exposure

89 to asbestos or asbestos-containing products;

90 (b) qualified settlement fund 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;

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

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

99 (e) plan of reorganization or trust pursuant to 11 U.S.C. Sec. 524(g) or 11 U.S.C. Sec.
100 1121(a) or other applicable provision of law that is intended to provide compensation to
101 claimants arising out of, based on, or related to the health effects of exposure to asbestos or
102 asbestos-containing products.

103 (6) "ATS testing standards" means the official technical statements from the American
104 Thoracic Society for pulmonary function testing in effect at the time of the performance of an
105 examination or test on an exposed individual.

106 (7) "Board-certified physician in internal medicine" means a licensed physician who is
107 certified by the American Board of Internal Medicine or the American Osteopathic Board of
108 Internal Medicine.

109 (8) "Board-certified physician in occupational medicine" means a licensed physician
110 who is certified in the specialty of:

111 (a) occupational medicine by the American Board of Preventative Medicine; or

112 (b) occupational and environmental medicine by the American Osteopathic Board of
113 Preventative Medicine.

114 (9) "Board-certified physician in pathology" means a licensed physician:

115 (a) who holds primary certification in anatomic pathology or clinical pathology from
116 the American Board of Pathology or the American Osteopathic Board of Pathology; and

117 (b) whose professional practice is principally in the field of pathology involving regular
118 evaluation of pathology materials obtained from surgical or postmortem specimens.

119 (10) "Board-certified physician in pulmonary medicine" means a licensed physician
120 who is certified in the specialty of pulmonary medicine by the American Board of Internal

121 Medicine or the American Osteopathic Board of Internal Medicine.

122 (11) "Certified B reader" means a physician who is certified as a B reader by the
123 National Institute for Occupational Safety and Health.

124 (12) "Chest x-ray" means a chest film taken in accordance with applicable state and
125 federal laws and taken in the posterior-anterior view.

126 (13) "Exposed individual" means an individual whose exposure to asbestos is the basis
127 for the asbestos action.

128 (14) "FEV1" means the maximal volume of air expelled in the first second during
129 performance of spirometry.

130 (15) "FEV1/FVC ratio" means the ratio that is calculated from FEV1 divided by FVC.

131 (16) "FVC" means the maximal volume of air expired with maximum effort from a
132 position of full inspiration.

133 (17) "ILO system" means the system for the classification of chest x-rays provided in
134 the International Labour Office's Guidelines for the Use of ILO International Classification of
135 Radiographs of Pneumoconioses that are in effect at the time of the performance of an
136 examination or test on the exposed individual.

137 (18) "Law firm" means a person that employs a lawyer.

138 (19) "Lawyer" means an individual who is authorized to provide legal services in any
139 state or territory of the United States.

140 (20) "Nonmalignant condition" means a condition that may be caused by asbestos other
141 than a diagnosed cancer.

142 (21) "Pathological evidence of asbestosis" means a statement by a board-certified
143 physician in pathology that more than one representative section of lung tissue demonstrates a
144 pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos
145 bodies and there is no other more likely explanation for the presence of the fibrosis.

146 [(4)] (22) "Plaintiff" means:

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

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

151 (23) "Plethysmography" means the test for determining lung volume in which the

152 exposed individual is enclosed in a chamber equipped to measure pressure, flow, or volume
153 change.

154 (24) "Predicted lower limit of normal" means the fifth percentile of healthy populations
155 based on age, height, and gender as referenced in the AMA guides.

156 (25) "Pulmonary function testing" means spirometry, lung volume testing, and
157 diffusion capacity testing, including appropriate measurements, quality control data, and
158 graphs, that are performed in accordance with the methods of calibration and techniques
159 provided in the AMA guides and the ATS testing standards in effect at the time of the
160 performance of a test on an exposed individual.

161 (26) "Qualified physician" means a licensed physician who:

162 (a) is a board-certified physician in internal medicine, a board-certified physician in
163 occupational medicine, a board-certified physician in pathology, or a board-certified physician
164 in pulmonary medicine, as is appropriate to the diagnostic specialty in question;

165 (b) (i) conducted a physical examination of the exposed individual and took a detailed
166 occupational, exposure, medical, smoking, and social history from the exposed individual; or

167 (ii) if the exposed individual is deceased, reviewed the pathology material and took a
168 detailed history from the individual most knowledgeable about the information forming the
169 basis of the asbestos action;

170 (c) (i) treated the exposed individual and had a physician-patient relationship with the
171 exposed individual at the time of the physical examination; or

172 (ii) if the licensed physician is a board-certified physician in pathology, examined
173 tissue samples or pathological slides of the exposed individual;

174 (d) prepared or directly supervised the preparation and final review of a medical report
175 under this part; and

176 (e) has not relied on any examinations, tests, radiographs, reports, or opinions of a
177 doctor, clinic, laboratory, or testing company that performed an examination, test, radiograph,
178 or screening of the exposed individual in violation of a law, regulation, licensing requirement,
179 or medical ethics requirement of the state in which the examination, test, radiograph, or
180 screening of the exposed individual was conducted.

181 (27) "Radiological evidence of asbestosis" means:

182 (a) a quality 1 chest x-ray showing bilateral small, irregular opacities, classified by

183 width as s, t, or u, that occur primarily in the lower lung zones graded by a certified B reader as
184 at least 1/1 on the ILO system; or

185 (b) if the exposed individual is deceased, no pathology is available, and a quality 1
186 chest x-ray is not available, a quality 2 chest x-ray showing bilateral small, irregular opacities,
187 classified by width as s, t, or u, that occur primarily in the lower lung zones graded by a
188 certified B reader as at least 1/1 on the ILO system.

189 (28) "Radiological evidence of diffuse bilateral pleural thickening" means:

190 (a) a quality 1 chest x-ray showing diffuse bilateral pleural thickening of at least b2 on
191 the ILO system and blunting of at least one costophrenic angle as classified by a certified B
192 reader; or

193 (b) if the exposed individual is deceased, no pathology is available, and a quality 1
194 chest x-ray is not available, a quality 2 chest x-ray showing diffuse bilateral pleural thickening
195 of at least b2 on the ILO system and blunting of at least one costophrenic angle as classified by
196 a certified B reader.

197 (29) "Spirometry" means a test of air capacity of the lung through a spirometer that
198 measures the volume of air inspired and expired.

199 (30) "Supporting test results" means a report by a certified B reader, x-ray
200 examinations, diagnostic imaging of the chest, pathology reports, pulmonary function testing,
201 and other tests, which are reviewed by the diagnosing physician or qualified physician in
202 reaching the physician's conclusions.

203 (31) "Sworn declaration" means the same as that term is defined in Section
204 [78B-18a-102](#).

205 (32) "Timed gas dilution" means a method for measuring total lung capacity in which
206 the individual breaths into a spirometer containing a known concentration of an inert and
207 insoluble gas for a specific time and the concentration of that inert and insoluble gas in the lung
208 is compared to the concentration of that type of gas in the spirometer.

209 (33) "Total lung capacity" means the volume of gas contained in the lungs at the end of
210 the maximal inspiration.

211 ~~(5)~~ (34) "Trust claims materials" means a final executed proof of claim and all other
212 documents and information related to a claim against an asbestos trust, including:

213 (a) claims forms and supplementary materials;

- 214 (b) affidavits;
- 215 (c) depositions and trial testimony;
- 216 (d) work history;
- 217 (e) medical and health records;
- 218 (f) documents reflecting the status of a claim against an asbestos trust; and
- 219 (g) all documents relating to the settlement of the trust claim if the trust claim has
- 220 settled.

221 ~~[(6)]~~ (35) "Trust governance documents" means all documents that relate to eligibility
 222 and payment levels, including:

- 223 (a) claims payment matrices; and
- 224 (b) trust distribution procedures or plans for reorganization for an asbestos trust.

225 ~~[(7)]~~ (36) "Veterans benefits" means a program for benefits in connection with
 226 military service administered by the United States Department of Veterans Affairs under
 227 United States Code, Title 38, Veterans Benefits.

228 ~~[(8)]~~ (37) (a) "Workers' compensation" means a program administered by the United
 229 States or a state to provide benefits, funded by a responsible employer or the employer's
 230 insurance carrier, for occupational diseases or injuries or for disability or death caused by
 231 occupational diseases or injuries.

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

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

237 Section 2. Section **78B-6-2402** is enacted to read:

238 **78B-6-2402. Required disclosures by plaintiff within 30 days of filing asbestos**
 239 **action.**

240 (1) Within 30 days after the day on which the plaintiff files a complaint in an asbestos
 241 action, the plaintiff shall provide all parties with a sworn declaration stating the evidence
 242 providing the basis for each claim against each defendant, including:

- 243 (a) the name, address, date of birth, marital status, occupation, smoking history, and
- 244 current and past employers and worksites of the exposed individual;

245 (b) any individual through whom the exposed individual alleges exposure to asbestos;

246 (c) the name and address of each individual who is knowledgeable about each exposure
247 to asbestos and the exposed individual's relationship to that individual;

248 (d) the specific name of each asbestos-containing product, including any brand or trade
249 name of that product, to which the exposed individual was exposed to asbestos or the other
250 individual that was exposed to asbestos if the exposed individual's exposure to asbestos was
251 through another individual;

252 (e) the identity of the manufacturer or seller of the specific asbestos-containing product
253 for each exposure;

254 (f) for each asbestos-containing product to which the exposed individual was exposed,
255 the site and specific location of the site, including the address of the site, where the exposed
256 person was exposed to asbestos or the other individual was exposed to asbestos if the exposed
257 individual's exposure to asbestos was through another individual;

258 (g) the beginning and ending dates of each exposure to asbestos, the specific manner of
259 exposure to asbestos, the frequency and length of each exposure to asbestos, and the proximity
260 of the asbestos-containing product or the product's use to the exposed individual and each
261 individual through whom the exposed individual alleges exposure to asbestos;

262 (h) the condition that is alleged to have been caused by exposure to asbestos; and

263 (i) any supporting documentation relating to the information required under this
264 Subsection (1).

265 (2) The sworn declaration under Subsection (1) is in addition to the disclosures
266 required under Sections [78B-6-2403](#) and [78B-6-2405](#).

267 (3) A plaintiff may not commence discovery against a defendant in an asbestos action
268 until the plaintiff files the sworn declaration with the evidence providing the basis for each
269 claim against the defendant as described in Subsection (1).

270 (4) On a motion by a defendant in an asbestos action, the court shall dismiss a
271 plaintiff's asbestos claim without prejudice:

272 (a) against a defendant if the defendant's asbestos-containing product or site is not
273 specifically identified in the sworn declaration under Subsection (1); or

274 (b) against all defendants if the plaintiff fails to comply with Subsection (1).

275 (5) A party in an asbestos action may not offer evidence at trial regarding, and the jury

276 may not be informed of, the grant or denial of a motion to dismiss under Subsection (4).

277 (6) This section applies to an asbestos action filed on or after May 3, 2023.

278 Section 3. Section **78B-6-2403** is enacted to read:

279 **78B-6-2403. Requirements for asbestos action alleging nonmalignant condition --**

280 **Evidence.**

281 (1) If a plaintiff files an asbestos action alleging a nonmalignant condition, the plaintiff
282 shall provide prima facie evidence that the exposed individual has a nonmalignant condition
283 for which exposure to asbestos was a substantial contributing factor.

284 (2) As part of a prima facie showing under Subsection (1), the plaintiff shall provide all
285 parties with a detailed narrative medical report and diagnosis, signed under oath by a qualified
286 physician and accompanied by supporting test results, that includes:

287 (a) (i) radiological evidence of asbestosis or pathological evidence of asbestosis;

288 (ii) radiological evidence of diffuse bilateral pleural thickening; or

289 (iii) a high-resolution computed tomography scan showing evidence of asbestosis or
290 diffuse pleural thickening;

291 (b) a detailed occupational and exposure history from the exposed individual, or the
292 individual most knowledgeable about the exposed individual's exposure to asbestos if the
293 exposed individual is deceased, that includes:

294 (i) the exposed individual's principal places of employment;

295 (ii) the exposed individual's exposure to airborne contaminants; and

296 (iii) whether the exposed individual's principal places of employment involved any
297 exposure to airborne contaminants, including asbestos fibers or other disease-causing dusts or
298 fumes that may cause a nonmalignant condition and the nature, duration, and level of that
299 exposure;

300 (c) a detailed medical, social, and smoking history from the exposed individual, or the
301 individual most knowledgeable about the exposed individual's exposure to asbestos if the
302 exposed individual is deceased, that includes a thorough review of the past and present medical
303 problems of the exposed individual and the likely cause of the medical problems;

304 (d) evidence verifying that at least 15 years have passed between the exposed
305 individual's date of first exposure to asbestos and the date of diagnosis;

306 (e) evidence that the exposed individual has a permanent respiratory impairment rating

307 of at least class 2 as defined by and evaluated in accordance with the AMA guides;

308 (f) evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic
309 obstructive pulmonary disease, is a substantial factor to the exposed individual's nonmalignant
310 condition based on a determination that the exposed individual has:

311 (i) FVC below the predicted lower limit of normal and a FEV1/FVC ratio equal to or
312 above the predicted lower limit of normal;

313 (ii) total lung capacity, by plethysmography or timed gas dilution, below the predicted
314 lower limit of normal; or

315 (iii) a chest x-ray showing bilateral small, irregular opacities, classified by width as s, t,
316 or u, and graded by a certified B reader as at least 2/2 on the ILO system; and

317 (g) a statement that the qualified physician signing the report has concluded that
318 exposure to asbestos was a substantial contributing factor to the exposed individual's
319 nonmalignant condition and was likely not the result of any other cause.

320 (3) A statement by the qualified physician that the exposed individual's nonmalignant
321 condition is consistent with, or compatible with, an exposure to asbestos, or words to that
322 effect, does not satisfy the requirements of this section.

323 (4) The detailed narrative medical report under Subsection (2) may not be prepared by
324 a lawyer or any individual working for or on behalf of a lawyer or law firm.

325 (5) A plaintiff shall file the detailed narrative medical report and diagnosis under
326 Subsection (2) within 30 days after the day on which the plaintiff files an asbestos action
327 alleging a nonmalignant condition.

328 (6) At any time before trial, a defendant shall have a reasonable opportunity to
329 challenge the adequacy of the prima facie evidence required under this section.

330 (7) The court shall dismiss an asbestos action without prejudice if the plaintiff fails to:

331 (a) comply with the requirements of this section; or

332 (b) make a prima facie showing under Subsection (1).

333 (8) (a) Except as provided in Subsection (8)(b), a plaintiff may not commence
334 discovery against any defendant in an asbestos action until a court enters an order determining
335 that the plaintiff has established prima facie showing under this section.

336 (b) The parties to an asbestos action may conduct discovery in regard to establishing or
337 challenging a prima facie showing under this section.

338 (9) Evidence establishing a prima facie showing under Subsections (1) and (2):
339 (a) shall comply with the quality controls, equipment requirements, methods of
340 calibration, and techniques provided in the AMA guides and ATS testing standards;
341 (b) may not be based on testing or examination that violates a law, regulation, licensing
342 requirement, or medical ethics requirement of the state in which the test or examination was
343 conducted;
344 (c) may not be obtained under the condition that the plaintiff retains the services of the
345 lawyer or law firm sponsoring the examination, test, or screening;
346 (d) does not create a presumption that the exposed individual has a nonmalignant
347 condition from exposure to asbestos; and
348 (e) is not conclusive of a defendant's liability.
349 (10) A party in an asbestos action may not offer evidence at trial regarding, and the jury
350 may not be informed of:
351 (a) the grant or denial of a motion to dismiss an asbestos action under Subsection (7);
352 (b) the requirements of a prima facie showing under this section; or
353 (c) the fact that an exposed individual established prima facie evidence of a
354 nonmalignant condition for which exposure to asbestos was a substantial contributing factor
355 under Subsections (1) and (2).
356 (11) This section applies to an asbestos action filed on or after May 3, 2023.
357 Section 4. Section **78B-6-2404** is enacted to read:
358 **78B-6-2404. Accrual of action alleging nonmalignant condition.**
359 (1) Notwithstanding the requirements of Section [78B-2-117](#), the statute of limitations
360 for an asbestos action alleging a nonmalignant condition may not begin to run until the earlier
361 of the day on which:
362 (a) the exposed individual is diagnosed with a nonmalignant condition from exposure
363 to asbestos that meets the prima facie evidence requirements of Section [78B-6-2403](#);
364 (b) the exposed individual discovered facts that would have led a reasonable individual
365 to obtain a diagnosis with respect to the existence of a nonmalignant condition from exposure
366 to asbestos that would have met the prima facie evidence requirements of Section [78B-6-2403](#);
367 or
368 (c) the exposed individual dies.

369 (2) Subsection (1) does not revive a statute of limitations for an asbestos action
 370 alleging a nonmalignant condition that is time barred on or before May 3, 2023.

371 Section 5. Section **78B-6-2405**, which is renumbered from Section 78B-6-2004 is
 372 renumbered and amended to read:

373 ~~[78B-6-2004].~~ **78B-6-2405. Required disclosures by plaintiff in asbestos**
 374 **action within 120 days of trial.**

375 (1) For each asbestos action filed in this state, the plaintiff shall provide all parties with
 376 a sworn ~~[statement]~~ declaration identifying all asbestos trust claims that have been filed by the
 377 plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related
 378 conditions other than those that are the basis for the asbestos action or that potentially could be
 379 filed by the plaintiff against an asbestos trust.

380 ~~[(a)]~~ (2) The sworn ~~[statement]~~ declaration shall be provided no later than 120 days
 381 ~~[prior to the date set for trial]~~ after the day on which trial is set for the asbestos action.

382 ~~[(b)]~~ (3) For each asbestos trust claim or potential asbestos trust claim identified in the
 383 sworn ~~[statement, the statement]~~ declaration, the sworn declaration shall include:

384 (a) the name, address and contact information for the asbestos trust~~[-]~~;

385 (b) the amount claimed or to be claimed by the plaintiff~~[-]~~;

386 (c) the date the plaintiff filed the claim~~[-]~~;

387 (d) the disposition of the claim; and

388 (e) whether there has been a request to defer, delay, suspend, or toll the claim.

389 ~~[(c)]~~ (4) The sworn ~~[statement]~~ declaration shall include an attestation from the
 390 plaintiff, under penalties of perjury, that the sworn ~~[statement]~~ declaration is complete and
 391 based on a good faith investigation of all potential claims against asbestos trusts.

392 ~~[(2)]~~ (5) The plaintiff shall make available to all parties all trust claims materials for
 393 each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's
 394 behalf against an asbestos trust, including any asbestos-related disease.

395 ~~[(3)]~~ (6) The plaintiff shall supplement the information and materials provided
 396 pursuant to this section within 90 days after the day on which the plaintiff files an additional
 397 asbestos trust claim, supplements an existing asbestos trust claim, or receives additional
 398 information or materials related to any claim or potential claim against an asbestos trust.

399 ~~[(4)]~~ (7) Failure by the plaintiff to make available to all parties all trust claims

400 materials as required by this part shall constitute grounds for the court to extend the trial date in
401 an asbestos action.

402 (8) (a) A court shall stay an asbestos action if the court finds that the plaintiff has failed
403 to make the disclosures required by this section within the time period described in Subsection
404 (2).

405 (b) If a plaintiff identifies a potential asbestos trust claim in the disclosures required by
406 this section, the court may stay the asbestos action until the plaintiff files the asbestos trust
407 claim and provides all parties with all trust claims materials for the asbestos trust claim.

408 (9) This section applies to an asbestos action filed on or after May 10, 2016.

409 Section 6. Section **78B-6-2406**, which is renumbered from Section 78B-6-2007 is
410 renumbered and amended to read:

411 ~~[78B-6-2007].~~ **78B-6-2406. Identification of additional or alternative**
412 **asbestos trusts by defendant before trial.**

413 (1) ~~[Not less than 90 days before trial, if]~~ If a defendant identifies an asbestos trust
414 claim not previously identified by the plaintiff that the defendant reasonably believes the
415 plaintiff can file and the defendant identifies the asbestos trust claim within 90 days before the
416 day on which trial is set, the defendant shall meet and confer with the plaintiff to discuss why
417 the defendant believes the plaintiff has an additional asbestos trust claim.

418 (2) The defendant may move the court for an order to require the plaintiff to file the
419 asbestos trust claim after the meeting under Subsection (1).

420 (3) The defendant shall produce or describe the documentation [it] that the defendant
421 possesses or is aware of in support of the motion under Subsection (2).

422 ~~[(2)]~~ (4) Within 10 days [of receiving] after the day on which the plaintiff receives the
423 defendant's motion under Subsection [(1)] (2), the plaintiff shall[;] for each asbestos trust claim
424 identified by the defendant[; do one of the following]:

425 (a) file the asbestos trust claim;

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

428 (c) file a written response with the court requesting a determination that the plaintiff's
429 expenses or ~~[attorney's]~~ the plaintiff's attorney fees and expenses to prepare and file the
430 asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably

431 anticipated recovery from the trust.

432 ~~[(3)]~~ (5) (a) If the court determines that there is a sufficient basis for the plaintiff to file
433 the asbestos trust claim identified by the defendant, the court shall:

434 (i) order the plaintiff to file the asbestos trust claim; and ~~[shall]~~

435 (ii) stay the asbestos action until the plaintiff files the asbestos trust claim and provides
436 all parties with all trust claims materials no later than 30 days before trial.

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

443 (6) This section applies to an asbestos action filed on or after May 10, 2016.

444 Section 7. Section **78B-6-2407**, which is renumbered from Section 78B-6-2005 is
445 renumbered and amended to read:

446 ~~[78B-6-2005].~~ **78B-6-2407. Discovery of materials and documents for**
447 **asbestos trust claim -- Use of asbestos trust materials.**

448 (1) Trust claims materials and trust governance documents are presumed to be relevant
449 and authentic and are admissible in evidence.

450 (2) Claims of privilege may not apply to any trust claims materials or trust governance
451 documents.

452 ~~[(2)]~~ (3) A defendant in an asbestos action may seek discovery from an asbestos trust.

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

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

459 (6) This section applies to an asbestos action filed on or after May 10, 2016.

460 Section 8. Section **78B-6-2408**, which is renumbered from Section 78B-6-2009 is
461 renumbered and amended to read:

462 ~~[78B-6-2009]~~. 78B-6-2408. Failure to provide information -- Sanctions.

463 A plaintiff who fails to provide all of the information required under ~~[this part]~~ Section
464 78B-6-2405, 78B-6-2406, or 78B-6-2407, is subject to sanctions as provided in the Utah Rules
465 of Civil Procedure and any other relief for the defendants that the court considers just and
466 proper.

467 Section 9. Section **78B-6-2409** is enacted to read:

468 **78B-6-2409. Liability of defendant for a product liability claim in an asbestos**
469 **action.**

470 (1) In a product liability claim against a defendant in an asbestos action, the defendant
471 is not liable for the exposed individual's exposure to asbestos if after the defendant made or
472 sold the product:

473 (a) a third party added or incorporated the asbestos to the product; and

474 (b) the defendant did not know, or could not have reasonably known, that the third
475 party added or incorporated the asbestos to the product.

476 (2) This section does not prevent or limit the liability of a defendant under Title 78B,
477 Chapter 6, Part 7, Utah Product Liability Act.

478 (3) This section applies to an asbestos action filed on or after May 3, 2023.

479 Section 10. **Repealer.**

480 This bill repeals:

481 Section **78B-6-2001, Title.**

482 Section **78B-6-2002, Legislative findings -- Purpose.**

483 Section **78B-6-2006, Scheduling trial -- Stay of action.**

484 Section **78B-6-2008, Valuation of asbestos trust claims.**

485 Section **78B-6-2010, Application.**