

FIRST REGULAR SESSION

SENATE BILL NO. 69

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0390S.05I

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to court proceedings.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto six new sections, to be known as sections 537.880, 537.882, 537.884, 537.886, 537.888, and 537.890, to read as follows:

537.880. 1. The provisions of sections 537.880 to 537.890 shall apply to asbestos actions filed on or after the effective date of such sections and to pending asbestos actions in which trial has not commenced as of such date.

2. As used in sections 537.880 to 537.890, the following words and terms shall have the meanings indicated, unless the context clearly requires otherwise:

(1) "Asbestos action", any claim for damages or other relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos and any 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;

(2) "Asbestos trust", a government-approved or court-approved trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or created under 11 U.S.C. Section 524(g) or 11 U.S.C. Section 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;

(3) "Asbestos trust claim", any claim for compensation by an

21 exposed person or the exposed person's representative against any
22 asbestos trust;

23 (4) "Claimant", any person bringing an asbestos action or
24 asserting an asbestos trust claim, including a personal representative
25 if the asbestos action or asbestos trust claim is brought by an estate, or
26 a conservator or next friend if the asbestos action or asbestos trust
27 claim is brought on behalf of a minor or legally incapacitated
28 individual. "Claimant" includes a claimant, counter-claimant,
29 cross-claimant, or third-party claimant;

30 (5) "Exposed person", any person whose exposure to asbestos or
31 to asbestos-containing products is the basis for an asbestos claim;

32 (6) "Trust claim materials", a final executed proof of claim and all
33 documents and information including copies of electronic data and
34 emails, submitted to or received from an asbestos trust by the claimant
35 including claim forms and supplementary materials, proofs of claim,
36 affidavits, depositions and trial testimony of the claimant and others
37 knowledgeable about the claimant's exposure history, work history,
38 exposure allegations, medical and health records, all documents that
39 reflect the status of a claim against an asbestos trust, and if the claim
40 has settled, all documents relating to the settlement of the trust claim;

41 (7) "Trust governance document", all documents that relate to
42 eligibility and payment levels, including claims payment matrices, trust
43 distribution procedures, or plans for reorganization for an asbestos
44 trust.

537.882. 1. Within thirty days after an asbestos action is filed or
2 within thirty days of the effective date of this section for asbestos
3 actions that are pending on that effective date, the claimant shall:

4 (1) Provide the court and parties with a sworn statement signed
5 by the claimant and claimant's counsel indicating that an investigation
6 has been conducted and that all asbestos trust claims that can be made
7 by the claimant or any person on the claimant's behalf have been
8 completed and filed. A deferral or placeholder claim that is missing
9 necessary documentation for the trust to review and pay the claim does
10 not meet the requirements of this section. The sworn statement shall
11 indicate whether there has been a request to delay, suspend, withdraw,
12 or otherwise alter the standing of any asbestos trust claim and provide
13 the status and disposition of each asbestos trust claim;

14 (2) Provide all parties with all trust claim materials, including
15 trust claim materials that relate to conditions other than those that are
16 the basis for the asbestos action and including all trust claim materials
17 from all law firms connected to the claimant in relation to exposure to
18 asbestos. Documents provided under this subsection shall be
19 accompanied by an affidavit certifying that the trust claim materials
20 are true and complete; and

21 (3) Produce all available trust claims filed by any individual
22 other than the claimant if the claimant's asbestos trust claim is based
23 on exposure to asbestos through that other individual and the materials
24 are available to the claimant or claimant's counsel.

25 2. The claimant shall have a continuing duty to supplement the
26 statement and materials provided under subsection 1 of this section
27 within thirty days after the claimant files an additional asbestos trust
28 claim, supplements an existing asbestos trust claim, or receives
29 additional trust claim materials related to any asbestos trust claim
30 made against an asbestos trust.

31 3. A court may impose sanctions for failure by a claimant or
32 claimant's counsel to comply with the requirements of sections 537.880
33 to 537.890, including dismissal of the asbestos action with prejudice for
34 willful failure to comply with the requirements of sections 537.880 to
35 537.890.

 537.884. 1. Not less than sixty days before the date the trial in
2 an asbestos action is set to commence, if the defendant believes the
3 plaintiff has not filed all asbestos trust claims as required by section
4 537.882 the defendant may move the court for an order to require the
5 plaintiff to file additional trust claims. The motion shall identify the
6 asbestos trust claims the defendant believes the claimant can file and
7 include information supporting those asbestos trust claims.

8 2. Within ten days after the filing of the defendant's motion, the
9 claimant shall:

10 (1) File the asbestos trust claims and produce all related trust
11 claim materials; or

12 (2) File a written response with the court stating why there is
13 insufficient evidence for the claimant to file the asbestos trust claims.

14 3. Within ten days of the claimant filing a written response to the
15 defendant's motion, the court shall determine if there is a sufficient

16 basis for the claimant to file the asbestos trust claim identified in the
17 defendant's motion.

18 4. If the court determines that there is a sufficient basis for the
19 claimant to file an asbestos trust claim identified in the defendant's
20 motion, the court shall stay the asbestos action until the claimant files
21 the asbestos trust claim and produces all related trust claim materials.

22 5. An asbestos action shall not be set for trial until at least
23 forty-five days after the claimant produces the documentation required
24 by this section.

537.886. 1. Trust claim materials and trust governance
2 documents are presumed to be relevant and authentic and are
3 admissible in evidence in an asbestos action. No claims of privilege
4 apply to trust claim materials or trust governance documents.

5 2. A defendant in an asbestos action may seek discovery against
6 an asbestos trust identified under sections 537.880 to 537.890. The
7 claimant shall not claim privilege or confidentiality to bar
8 discovery. The claimant shall provide consent or any other expression
9 of permission that may be required by the asbestos trust to release
10 information and materials sought by the defendant.

11 3. Trust claim materials that are sufficient to entitle a claim to
12 consideration for payment under the applicable trust governance
13 documents may be sufficient to support a jury finding that the claimant
14 was exposed to products for which the trust was established to provide
15 compensation and that such exposure was a substantial contributing
16 factor in causing the claimant's injury that is at issue in the asbestos
17 action.

18 4. The parties in the asbestos action may introduce at trial any
19 trust claim materials or trust governance documents to prove, without
20 limitation, alternative causation for the exposed person's claimed
21 injury, death, or loss to person; to prove that the bankrupt entity is a
22 joint tort-feasor, liable for the same injury or wrongful death for the
23 purposes of section 537.060; or to prove issues relevant to an
24 adjudication of the asbestos claim, unless the exclusion of the trust
25 claim material is otherwise required by the rules of evidence. The jury
26 shall not be informed of the specific amount of consideration paid by
27 a trust to a claimant in settlement of a claim.

537.888. 1. If a claimant proceeds to trial in an asbestos action

2 before an asbestos trust claim is resolved, there is a rebuttable
3 presumption that the claimant is entitled to, and will receive, the
4 compensation specified in the trust governance documents applicable
5 to his or her claim at the time of trial. The court shall take judicial
6 notice that the trust governance documents specify compensation
7 amounts and payment percentages and shall establish an attributed
8 value to the claimant's asbestos trust claims.

9 2. In an asbestos action in which damages are awarded and
10 setoffs are permitted under applicable law, a defendant is entitled to
11 a setoff or credit in the amount the claimant has been awarded from
12 the asbestos trust, and the amount of the valuation established under
13 subsection 1 of this section. If multiple defendants are found to be
14 liable for damages, the court shall distribute the amount of setoff or
15 credit proportionally between the defendants, according to the liability
16 of each defendant.

537.890. 1. If, subsequent to obtaining a judgment in an asbestos
2 action, a claimant files any additional asbestos trust claim with, or
3 submits any additional asbestos trust claim to, an asbestos trust that
4 was in existence at the time the claimant obtained judgment, the trial
5 court, upon the filing by a defendant or judgment debtor of an
6 appropriate motion seeking sanctions or other relief, has jurisdiction
7 to reopen the judgment in the asbestos action and adjust the judgment
8 by the amount of any subsequent asbestos trust payments obtained by
9 the claimant and order any other relief that the court considers just
10 and proper.

11 2. A defendant or judgment debtor shall file any motion under
12 this section within a reasonable time and not more than one year after
13 the judgment was entered or taken.

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