

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 575

AN ACT

To amend chapter 537, RSMo, by adding thereto seven new sections relating to exposure to asbestos.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Chapter 537, RSMo, is amended by adding thereto
2 seven new sections, to be known as sections 537.880, 537.882,
3 537.884, 537.886, 537.888, 537.890, and 1, to read as follows:

4 537.880. 1. The provisions of sections 537.880 to 537.890
5 shall apply to asbestos actions filed on or after the effective
6 date of such sections and to pending asbestos actions in which
7 trial has not commenced as of such date.

8 2. As used in sections 537.880 to 537.890, the following
9 words and terms shall mean, unless the context clearly requires
10 otherwise:

11 (1) "Asbestos action", any claim for damages or other
12 relief presented in a civil action arising out of, based on, or
13 related to the health effects of exposure to asbestos and any
14 derivative claim made by or on behalf of a person exposed to
15 asbestos or a representative, spouse, parent, child, or other
16 relative of that person, but does not include a claim for
17 compensatory benefits pursuant to workers' compensation law or
18 for veterans' benefits;

19 (2) "Asbestos trust", a government-approved or court-

1 approved trust, qualified settlement fund, compensation fund, or
2 claims facility created as a result of an administrative or legal
3 action, a court-approved bankruptcy, or created under 11 U.S.C.
4 Section 524(g) or 11 U.S.C. Section 1121(a) or other applicable
5 provision of law, that is intended to provide compensation to
6 claimants arising out of, based on, or related to the health
7 effects of exposure to asbestos;

8 (3) "Asbestos trust claim", any claim for compensation by
9 an exposed person or the exposed person's representative against
10 any asbestos trust;

11 (4) "Claimant", any person bringing an asbestos action or
12 asserting an asbestos trust claim, including a personal
13 representative if the asbestos action or asbestos trust claim is
14 brought by an estate, or a conservator or next friend if the
15 asbestos action or asbestos trust claim is brought on behalf of a
16 minor or legally incapacitated individual. "Claimant" includes a
17 claimant, counter-claimant, cross-claimant, or third-party
18 claimant;

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

22 (6) "Trust claim materials", a final executed proof of
23 claim and all documents and information including copies of
24 electronic data and emails, submitted to or received from an
25 asbestos trust by the claimant including claim forms and
26 supplementary materials, proofs of claim, affidavits, depositions
27 and trial testimony of the claimant and others knowledgeable
28 about the claimant's exposure history, work history, exposure

1 allegations, medical and health records, all documents that
2 reflect the status of a claim against an asbestos trust, and if
3 the claim has settled, all documents relating to the settlement
4 of the trust claim;

5 (7) "Trust governance document", all documents that relate
6 to eligibility and payment levels, including claims payment
7 matrices, trust distribution procedures, or plans for
8 reorganization for an asbestos trust;

9 (8) "Veterans' benefits", a program for benefits in
10 connection with military service administered by the Veterans'
11 Administration under 38 U.S.C. Title 38;

12 (9) "Workers' compensation", a program administered by the
13 United States or a state to provide benefits, funded by a
14 responsible employer or its insurance carrier, for occupational
15 diseases or injuries or for disability or death caused by
16 occupational diseases or injuries. "Workers' compensation"
17 includes the Longshore and Harbor Workers' Compensation Act, 33
18 U.S.C. Section 901, et seq., and Federal Employees' Compensation
19 Act, 5 U.S.C. Chapter 81. "Workers' compensation" does not
20 include the Federal Employers' Liability Act of April 22, 1908,
21 45 U.S.C. Section 51, et seq..

22 537.882. 1. Within forty-five days after an asbestos
23 action is filed or within forty-five days of the effective date
24 of this section for asbestos actions that are pending on that
25 effective date, the claimant shall:

26 (1) Provide the court and parties with a sworn statement
27 signed by the claimant and claimant's counsel indicating that an
28 investigation has been conducted and that all asbestos trust

1 claims that can be made by the claimant or any person on the
2 claimant's behalf have been completed and filed. A deferral or
3 placeholder claim that is missing necessary documentation for the
4 trust to review and pay the claim does not meet the requirements
5 of this section. The sworn statement shall indicate whether
6 there has been a request to delay, suspend, withdraw, or
7 otherwise alter the standing of any asbestos trust claim and
8 provide the status and disposition of each asbestos trust claim;

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

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

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

28 3. A court may impose sanctions for failure by a claimant

1 or claimant's counsel to comply with the requirements of sections
2 537.880 to 537.890, including dismissal of the asbestos action
3 with prejudice for willful failure to comply with the
4 requirements of sections 537.880 to 537.890.

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

13 2. If a defendant has previously filed a motion under
14 subsection 1 of this section, the court shall not grant a
15 subsequent motion if the defendant knew that the claimant met the
16 criteria for payment for the additional asbestos trust claim
17 identified in the subsequent motion at the time the earlier
18 motion was filed.

19 3. Within ten days after the filing of the defendant's
20 motion, the claimant shall:

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

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

26 4. Within ten days of the claimant filing a written
27 response to the defendant's motion, the court shall determine if
28 there is a sufficient basis for the claimant to file the asbestos

1 trust claim identified in the defendant's motion.

2 5. If the court determines that there is a sufficient basis
3 for the claimant to file an asbestos trust claim identified in
4 the defendant's motion, the court shall order the claimant to
5 file the asbestos trust claim and produce all related trust claim
6 materials within ten days. If the claimant does not comply with
7 the court's order, the asbestos action shall not proceed to trial
8 until at least thirty days after the claimant complies with the
9 court's order.

10 537.886. 1. Trust claim materials and trust governance
11 documents are presumed to be relevant and authentic and are
12 admissible in evidence in an asbestos action. No claims of
13 privilege apply to trust claim materials or trust governance
14 documents.

15 2. A defendant in an asbestos action may seek discovery
16 against an asbestos trust identified under sections 537.880 to
17 537.890. The claimant shall not claim privilege or
18 confidentiality to bar discovery. The claimant shall provide
19 consent or any other expression of permission that may be
20 required by the asbestos trust to release information and
21 materials sought by the defendant.

22 3. Trust claim materials that are sufficient to entitle a
23 claim to consideration for payment under the applicable trust
24 governance documents may be sufficient to support a jury finding
25 that the claimant was exposed to products for which the trust was
26 established to provide compensation and that such exposure was a
27 substantial contributing factor in causing the claimant's injury
28 that is at issue in the asbestos action.

1 4. The parties in the asbestos action may introduce at
2 trial any trust claim materials or trust governance documents to
3 prove, without limitation, alternative causation for the exposed
4 person's claimed injury, death, or loss to person; to prove that
5 the bankrupt entity is a joint tortfeasor, liable for the same
6 injury or wrongful death for the purposes of section 537.060; or
7 to prove issues relevant to an adjudication of the asbestos
8 claim, unless the exclusion of the trust claim material is
9 otherwise required by the rules of evidence. The jury shall not
10 be informed of the specific amount of consideration paid by a
11 trust to a claimant in settlement of a claim.

12 537.888. 1. If a claimant proceeds to trial in an asbestos
13 action before an asbestos trust claim is resolved, there is a
14 rebuttable presumption that the claimant is entitled to, and will
15 receive, the compensation specified in the trust governance
16 documents applicable to his or her claim at the time of trial.
17 The court shall take judicial notice that the trust governance
18 documents specify compensation amounts and payment percentages
19 and shall establish an attributed value to the claimant's
20 asbestos trust claims.

21 2. In an asbestos action in which damages are awarded and
22 setoffs are permitted under applicable law, a defendant is
23 entitled to a setoff or credit in the amount the claimant has
24 received from the asbestos trust, and the amount of the valuation
25 established under subsection 1 of this section. If multiple
26 defendants are found to be liable for damages, the court shall
27 distribute the amount of setoff or credit proportionally between
28 the defendants, according to the liability of each defendant.

1 3. In an asbestos action in which damages are awarded and a
2 setoff is applied under applicable law, the setoff or credit for
3 an asbestos trust claim that has been resolved shall be the
4 amount of the actual payment received by the claimant from the
5 asbestos trust after application of any applicable payment
6 percentages.

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

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

21 Section 1. (1) Beginning August 28, 2022, no person or
22 entity may manufacture, process, sell, or distribute asbestos.

23 (2) The provisions of this section shall not apply to:

24 (a) End-use of asbestos which has been installed in a
25 building or other structure before the effective date of this
26 section;

27 (b) Distribution of asbestos solely for the purpose of
28 disposal in compliance with applicable federal, state, and local

1 requirements; or

2 (c) Asbestos that meets any of the following:

3 a. The manufacture, processing, selling, or distribution in
4 commerce of asbestos by the person which is necessary to protect
5 law enforcement interests or the security interests of the state
6 or any political subdivision of the state or of the United
7 States; or

8 b. No feasible or reasonable alternative to the
9 manufacture, processing, or distribution in commerce of asbestos
10 exists for the intended use.