## 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	<u>otherwise:</u>
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	<u>claimant;</u>
19	(5) "Exposed person", any person whose exposure to asbestos
20	or to asbestos-containing products is the basis for an asbestos
21	<u>claim;</u>
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	<u>claimant's counsel.</u>
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	<u>asbestos trust claims.</u>
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	<u>asbestos trust claims.</u>
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.

3. In an asbestos action in which damages are awarded and a
setoff is applied under applicable law, the setoff or credit for
an asbestos trust claim that has been resolved shall be the
amount of the actual payment received by the claimant from the
asbestos trust after application of any applicable payment
percentages.
537.890. 1. If, subsequent to obtaining a judgment in an
asbestos action, a claimant files any additional asbestos trust
claim with, or submits any additional asbestos trust claim to, an
asbestos trust that was in existence at the time the claimant
obtained judgment, the trial court, upon the filing by a
defendant or judgment debtor of an appropriate motion seeking
sanctions or other relief, has jurisdiction to reopen the
judgment in the asbestos action and adjust the judgment by the
amount of any subsequent asbestos trust payments obtained by the
claimant and order any other relief that the court considers just
and proper.
2. A defendant or judgment debtor shall file any motion
under this section within a reasonable time and not more than one
year after the judgment was entered or taken.
Section 1. (1) Beginning August 28, 2022, no person or
entity may manufacture, process, sell, or distribute asbestos.
(2) The provisions of this section shall not apply to:
(a) End-use of asbestos which has been installed in a
building or other structure before the effective date of this
section;
(b) Distribution of asbestos solely for the purpose of
disposal in compliance with applicable federal, state, and local

- 1 <u>requirements; or</u>
- 2 (c) Asbestos that meets any of the following: a. The manufacture, processing, selling, or distribution in 3 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 b. No feasible or reasonable alternative to the 8 9 manufacture, processing, or distribution in commerce of asbestos
- 10 <u>exists for the intended use.</u>