

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0928S.02I
Bill No.: SB 200
Subject: Civil Procedure; Construction and Building Codes; Credit and Bankruptcy;
Estates, Wills and Trusts; Liability
Type: Original
Date: April 6, 2021

Bill Summary: This proposal establishes provisions relating to asbestos, including prohibiting asbestos and providing procedures for the disclosure of asbestos trust claims.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Tort Victims Compensation Fund*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

*Oversight assumes the reduction in punitive damages impacting the Tort Victims Compensation Fund would not reach the \$250,000 threshold.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Attorney General's Office (AGO)** assume that if this legislation becomes law, it will be more difficult for claimants to receive punitive damages, thus the total amount of punitive damages awarded in Missouri will decrease. Since the Tort Victims' Compensation Fund is funded by liens on punitive damages, the AGO assumes that a decrease in punitive damages awarded will decrease the amount of funds generated through these liens for the Tort Victims' Compensation Fund.

It is not possible to know the extent to which punitive damages awarded to claimants will decrease under this proposal, therefore, the AGO assumes it will have an unknown negative fiscal impact on the Tort Victims' Compensation Fund.

Oversight notes that under §537.675.3, 50% of the punitive damage state judgments, after deducting attorney's fees and expenses, shall go into the Tort Victims' Compensation Fund (0622). Information provided by the Attorney General shows that between July, 2014, and December, 2019, the Tort Victims Compensation Fund received \$20,043,083. During that period, average annual payments into the Tort Victims Compensation Fund (TVCF) were \$3,644,197.

The AGO does not track the types of claims paid into the TVCF, so this number is likely an overestimate, as it includes claims not affected by this proposal. Oversight notes on average from 2015 to 2019, the court heard 270 cases regarding asbestos tort actions according to the table below. Therefore, **Oversight** will show a \$0 to (unknown) fiscal impact to the TVCF.

Year	Asbestos Cases
2015	268
2016	303
2017	353
2018	161
2019	267
Average	270

Tables 27 & 33 – OSCA's Statistical Annual Report Supplement

Officials from the **Office of the State Courts Administrator**, the **Department of Economic Development** and the **Department of Labor and Industrial Relations** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have

any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Officials from the **City of Ballwin**, the **City of Claycomo**, the **City of Corder**, the **City of Kansas City**, the **City of O’Fallon**, the **City of Springfield**, **St. Louis City**, the **Crestwood Police Department**, the **Ellisville Police Department**, the **Kansas City Police Department**, the **Springfield Police Department**, the **St. Joseph Police Department** and the **St. Louis County Police Department** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, circuit clerks, sheriff and police departments were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
TORT VICTIMS COMPENSATION FUND			
<u>Loss – AGO – potential reduction from payouts of punitive damages to TVCF</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON TORT VICTIMS COMPENSATION FUND	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Small businesses involved in asbestos-related actions could be impacted as a result of this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to asbestos, including prohibiting the manufacturing, processing, selling, and distribution of asbestos and establishing procedures for a claimant in a civil action for damages due to asbestos exposure to disclose claims the claimant has filed with an asbestos trust.

PROHIBITION OF ASBESTOS (Section 292.700)

Beginning August 28, 2023, no person or entity may manufacture, process, sell, or distribute asbestos. This provision shall not apply to the end-use of asbestos which has been installed in a building or other structure before the effective date of this act, the distribution of asbestos solely for the purposes of disposal in compliance with applicable federal, state, and local regulations, and any asbestos that is necessary to protect law enforcement or security interests. Additionally, this provision shall not apply where there is no feasible or reasonable alternative to the manufacture, processing, or distribution of asbestos.

ASBESTOS TRUST (Section 537.880)

An asbestos trust is defined in the act as a government or court approved trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative action, legal action, court-approved bankruptcy, or law that is intended to provide compensation to people who have experienced health effects due to asbestos exposure.

This act applies to all asbestos actions filed on or after the effective date and to pending asbestos actions in which a trial has not commenced as of such date.

DOCUMENT DISCLOSURE REQUIREMENTS (Section 537.882)

Within 45 days of filing a civil action for damages due to health effects that resulted from the exposure to asbestos, or within 45 days of the effective date of this act for currently pending asbestos actions, a claimant shall provide the court and other parties the following documents:

- (1) A sworn statement stating that an investigation has been conducted and the claimant has filed all available asbestos trust claims, and providing the status and disposition of each asbestos trust claim;
- (2) All trust claim materials, as defined in the act, which shall include materials that relate to other conditions and materials from all law firms connected to the claimant in relation to exposure to asbestos; and
- (3) All available trust claims filed by any individual, other than the claimant, if the claimant's asbestos action is based on exposure through that individual and the materials are available to the claimant or the claimant's counsel.

The claimant must continually supplement or amend the required information and documents given to the court and other parties as stipulated in the act.

PROCESS FOR FAILURE TO FILE ALL TRUST CLAIMS (Section 537.884)

No less than 60 days before trial in an asbestos action, if the defendant believes the claimant has not filed all the available asbestos trust claims, the defendant may file a motion with the court requesting the court to require the claimant to file additional trust claims. If a defendant has previously filed a motion, the court shall not grant any subsequent motion if the defendant knew that the claimant met the criteria for payment for the additional asbestos trust claim identified in the subsequent motion at the time the earlier motion was filed.

Within 10 days after receiving the defendant's motion, the claimant can then either file the asbestos trust claims and produce the related trust claims materials or file a response with the court stating why there is insufficient evidence for the claimant to file the asbestos trust claims. The court shall make a determination within 10 days of the claimant's response. If the court finds that there is a sufficient basis for the claimant to file the additional asbestos trust claim, the court shall order the claimant to file the asbestos trust claim and produce all related materials within 10 days. If the claimant fails to comply with the court's order, the action may not proceed to trial until at least 30 days after compliance.

DISCOVERY AND ADMISSIBILITY OF TRUST CLAIM MATERIALS AND TRUST GOVERNANCE DOCUMENTS (Sections 537.886 and 537.888)

Trust claim materials and trust governance documents are admissible in evidence and are presumed to be relevant and authentic. No claims of privilege apply to trust claim materials and trust governance documents. Additionally, a defendant may seek discovery against an asbestos trust, and the claimant cannot claim privilege or confidentiality in order to prohibit discovery of such materials. The claimant shall provide consent to release the trust information and materials requested by the defendant.

Trust claim materials that are sufficient to entitle a claim for payment under the applicable trust governance documents may support a jury finding that the claimant was exposed to products for which the trust was established to provide compensation and that such exposure was a substantial contributing factor in causing the claimant's injury.

Any trust claim materials or trust governance documents may be introduced at trial to prove issues relevant to the adjudication of the asbestos claim, including alternative causation of the injury or that an entity is a joint-tortfeasor, unless otherwise excluded by the rules of evidence. The jury shall not be informed of the amount of consideration paid by a trust to a claimant to settle a claim.

If the claimant has asbestos trust claims that have not been resolved at the time of trial, there is a rebuttable presumption that the claimant will receive compensation specified in the applicable trust governance documents. If allowed by law, the defendant may be entitled to a setoff or credit in the amount the claimant has received from an asbestos trust. Any setoff or credit for an

asbestos trust claim that has been resolved shall be the amount of actual payment received by the claimant after application of any payment percentages.

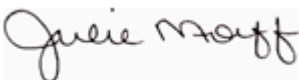
FILING OF ADDITIONAL ASBESTOS TRUST CLAIMS (Section 537.890)

After obtaining a judgment in an asbestos action, if 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 the judgment, the trial court, upon the filing by the 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.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Office of the State Courts Administrator
Department of Economic Development
Department of Labor and Industrial Relations
City of Ballwin
City of Claycomo
City of Corder
City of Kansas City
City of O'Fallon
City of Springfield
St. Louis City
Crestwood Police Department
Ellisville Police Department
Kansas City Police Department
Springfield Police Department
St. Joseph Police Department
St. Louis County Police Department



Julie Morff
Director
April 6, 2021



Ross Strobe
Assistant Director
April 6, 2021