

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 177

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT; AMEND-
2 ING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 31, TITLE 6,
3 IDAHO CODE, TO PROVIDE A TITLE, TO DEFINE TERMS, TO REQUIRE A CLAIMANT
4 TO MAKE CERTAIN DISCLOSURES, TO ALLOW A DEFENDANT TO FILE A CERTAIN MO-
5 TION REGARDING ADDITIONAL OR ALTERNATIVE TRUSTS, TO PROVIDE FOR CERTAIN
6 REQUIREMENTS REGARDING DISCOVERY AND USE OF MATERIALS, TO PROVIDE FOR
7 A RECORD THAT IDENTIFIES ASBESTOS TRUST CLAIMS, TO PROVIDE FOR A REBUT-
8 TABLE PRESUMPTION REGARDING COMPENSATION, TO PROVIDE FOR JUDICIAL NO-
9 TICE REGARDING COMPENSATION, TO PROVIDE SANCTIONS FOR FAILURE TO PRO-
10 VIDE CERTAIN INFORMATION AND TO PROVIDE APPLICABILITY.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
15 ter 31, Title 6, Idaho Code, and to read as follows:

16 CHAPTER 31

17 ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT

18 6-3101. TITLE. This chapter shall be known and may be cited as the "As-
19 bestos Bankruptcy Trust Claims Transparency Act."

20 6-3102. DEFINITIONS. As used in this chapter:

21 (1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite as-
22 bestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite,
23 asbestiform richterite, asbestiform amphibole minerals and any of these
24 minerals that have been chemically treated or altered, including all min-
25 erals defined as asbestos in 29 CFR 1910, at the time the asbestos action is
26 filed.

27 (2) "Asbestos action" means a claim for damages or other civil or equi-
28 table relief presented in a civil action arising out of, based on or related
29 to the health effects of exposure to asbestos, including loss of consortium,
30 wrongful death, mental or emotional injury, risk or fear of disease or other
31 injury, costs of medical monitoring or surveillance and any other derivative
32 claim made by or on behalf of a person exposed to asbestos or a representa-
33 tive, spouse, parent, child or other relative of that person.

34 (3) "Asbestos trust" means a government-approved or court-approved
35 trust, qualified settlement fund, compensation fund or claims facility
36 created as a result of an administrative or legal action, a court-approved
37 bankruptcy, or pursuant to 11 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other
38 applicable provision of law, that is intended to provide compensation to
39 claimants arising out of, based on or related to the health effects of expo-
40 sure to asbestos.

1 (4) "Claimant" means any person, living or deceased, bringing an as-
2bestos action or asserting an asbestos trust claim, including a personal
3 representative if the asbestos action or asbestos trust claim is brought by
4 an estate, or a conservator or next friend if the asbestos action or asbestos
5 trust claim is brought on behalf of a minor or legally incapacitated individ-
6 ual. "Claimant" includes a claimant, counter-claimant, cross-claimant or
7 third-party claimant.

8 (5) "Trust claims materials" means a final executed proof of claim and
9 all other documents and information submitted to an asbestos trust, includ-
10 ing claims forms and supplementary materials, affidavits, depositions and
11 trial testimony, work history, and medical and health records, documents
12 reflecting the status of a claim against an asbestos trust, and if the trust
13 claim has settled, all documents relating to the settlement of the trust
14 claim.

15 (6) "Trust governance documents" means all documents that relate to el-
16 igibility and payment levels, including claims payment matrices, trust dis-
17 tribution procedures, or plans for reorganization, for an asbestos trust.

18 6-3103. REQUIRED DISCLOSURES BY CLAIMANT. (1) Within forty-five (45)
19 days after an asbestos action is filed, or within forty-five (45) days after
20 the effective date of this chapter, whichever is later, the claimant shall do
21 the following:

22 (a) Provide the court and parties with a sworn statement signed by
23 claimant and claimant's counsel, under penalties of perjury, indi-
24 cating that an investigation of all asbestos trust claims has been
25 conducted and that all asbestos trust claims that can be made by the
26 claimant or any person on the claimant's behalf have been filed. The
27 sworn statement must indicate whether there has been a request to defer,
28 delay, suspend or toll any asbestos trust claim, and provide the dispo-
29 sition of each asbestos trust claim;

30 (b) Provide all parties with all trust claims materials, including
31 trust claims materials that relate to conditions other than those that
32 are the basis for the asbestos action and including all trust claims ma-
33 terials from all law firms connected to claimant in relation to exposure
34 to asbestos, including anyone at a law firm involved in the asbestos
35 action, any referring law firm, and any other firm that has filed an
36 asbestos trust claim for the claimant or on the claimant's behalf; and

37 (c) If the claimant's asbestos trust claim is based on exposure to as-
38 bestos through another individual, the claimant shall produce all trust
39 claims materials submitted by the other individual to any asbestos
40 trusts if the materials are available to claimant or claimant's coun-
41 sel.

42 (2) The claimant shall supplement the information and materials re-
43 quired under subsection (1) of this section within thirty (30) days after
44 the claimant or a person on the claimant's behalf supplements an existing
45 asbestos trust claim, receives additional information or materials related
46 to an asbestos trust claim, or files an additional asbestos trust claim.

47 (3) The court may dismiss the asbestos action if the claimant fails to
48 comply with the provisions of this section.

1 (4) An asbestos action may not be set for trial until at least one hun-
2 dred eighty (180) days after the requirements of subsection (1) of this sec-
3 tion are met.

4 6-3104. IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE ASBESTOS TRUSTS
5 BY DEFENDANT. (1) A defendant may file a motion requesting a stay of the pro-
6 ceedings on or before the latter of the sixtieth day before the date trial
7 in the action is set to commence or the fifteenth day after the defendant
8 first obtains information that could support additional trust claims by the
9 claimant. The motion shall identify the asbestos trust claims the defendant
10 believes the claimant can file and include information supporting the as-
11 bestos trust claims.

12 (2) Within ten (10) days of receiving the defendant's motion, the
13 claimant shall:

14 (a) File the asbestos trust claims;

15 (b) File a written response with the court stating why there is insuffi-
16 cient evidence for the claimant to file the asbestos trust claims; or

17 (c) File a written response with the court requesting a determination
18 that the cost to file the asbestos trust claims exceeds the claimant's
19 reasonably anticipated recovery.

20 (3) (a) If the court determines that there is a sufficient basis for the
21 claimant to file an asbestos trust claim identified in the motion to
22 stay, the court shall stay the asbestos action until the claimant files
23 the asbestos trust claim and produces all related trust claims materi-
24 als.

25 (b) If the court determines that the cost of submitting an asbestos
26 trust claim exceeds the claimant's reasonably anticipated recovery,
27 the court shall stay the asbestos action until the claimant files with
28 the court and provides all parties with a verified statement of the
29 claimant's history of exposure, usage or other connection to asbestos
30 covered by that asbestos trust.

31 (4) An asbestos action may not be set for trial until at least sixty (60)
32 days after the claimant provides the documentation required by the provi-
33 sions of this section.

34 6-3105. DISCOVERY -- USE OF MATERIALS. (1) Trust claims materials and
35 trust governance documents are presumed to be relevant and authentic and are
36 admissible in evidence in an asbestos action. A claim of privilege does not
37 apply to any trust claims materials or trust governance documents. The pre-
38 sumption can be contested by motion of either party.

39 (2) A defendant in an asbestos action may seek discovery from an as-
40 bestos trust. The claimant may not claim privilege or confidentiality to bar
41 discovery and shall provide consent or other expression of permission that
42 may be required by the asbestos trust to release information and materials
43 sought by a defendant.

44 (3) Trust claims materials that are sufficient to entitle a claim to
45 consideration for payment under the applicable trust governance documents
46 may be sufficient to support a jury finding that the claimant may have been
47 exposed to products for which the trust was established to provide compensa-
48 tion and that, under applicable law, such exposure may be a substantial con-

1 tributing factor in causing the claimant's injury that is at issue in the as-
2 bestos action.

3 6-3106. TRUST RECORD -- VALUATION OF ASBESTOS TRUST CLAIMS -- JUDICIAL
4 NOTICE. (1) Not less than thirty (30) days before trial in an asbestos ac-
5 tion, the court shall enter into the record a document that identifies every
6 asbestos trust claim made by the claimant or on the claimant's behalf.

7 (2) If a claimant proceeds to trial in an asbestos action before an
8 asbestos trust claim is resolved, there is a rebuttable presumption that
9 the claimant is entitled to, and will receive, the compensation specified
10 in the trust governance document applicable to his or her claim at the time
11 of trial. The court shall take judicial notice that the trust governance
12 document specifies compensation amounts and payment percentages and shall
13 establish an attributed value to the claimant's asbestos trust claims based
14 on the values established by the asbestos trusts.

15 6-3107. FAILURE TO PROVIDE INFORMATION -- SANCTIONS. (1) On the motion
16 of a defendant or judgment debtor seeking sanctions or other relief in an as-
17 bestos action, the court may impose any sanction provided by court rule or
18 a law of this state including, but not limited to, vacating a judgment ren-
19 dered in the action, for a claimant's failure to comply with the disclosure
20 requirements of this chapter.

21 (2) If the claimant or a person on the claimant's behalf files an as-
22 bestos trust claim after the claimant obtains a judgment in an asbestos ac-
23 tion and that asbestos trust was in existence at the time the claimant ob-
24 tained the judgment, the trial court, on motion by a defendant or judgment
25 debtor seeking sanctions or other relief, has jurisdiction, pursuant to rule
26 59 of the Idaho rules of civil procedure, to reopen the judgment in the as-
27 bestos action and adjust the judgment by the amount of any subsequent as-
28 bestos trust payments obtained by the claimant and order any other relief to
29 the parties that the court considers just and proper.

30 (3) A defendant or judgment debtor shall file any motion under this sec-
31 tion within a reasonable time and not more than one (1) year after the judg-
32 ment was entered.

33 6-3108. APPLICABILITY. This chapter shall apply to all asbestos ac-
34 tions filed on or after the effective date.