

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

931Y0473

SENATE BILL NO. 138

Introduced by: Senators Stalzer and Maher and Representatives Hawley, Haggar, Rounds,
and Willadsen

1 FOR AN ACT ENTITLED, An Act to provide certain provisions regarding asbestos bankruptcy
2 trust claims.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

6 (1) "Asbestos," chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite
7 asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform
8 amphibole minerals, or any of these minerals that have been chemically treated or
9 altered, including any mineral defined as asbestos in 29 C.F.R. § 1910 at the time an
10 asbestos action is filed;

11 (2) "Asbestos action," a claim for damages or other civil or equitable relief presented in
12 a civil action arising out of, based on, or related to the health effects of exposure to
13 asbestos, including loss of consortium, wrongful death, mental or emotional injury,
14 risk or fear of disease or other injury, costs of medical monitoring or surveillance, or
15 any other derivative claim made by or on behalf of a person exposed to asbestos or



1 a representative, spouse, parent, child, or other relative of that person;

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

8 (4) "Plaintiff," any person who brings an asbestos action, including a personal
9 representative for any asbestos action that is brought by an estate, or a conservator
10 or next friend for any asbestos or silica action that is brought on behalf of a minor or
11 a legally incapacitated person;

12 (5) "Trust claims material," any final executed proof of claim, any other document or
13 information related to a claim against an asbestos trust, including a claim form or
14 supplementary material, affidavit, deposition or trial testimony, work history, medical
15 or health record, document reflecting the status of a claim against an asbestos trust,
16 or if the trust claim has settled, any document relating to the settlement of the trust
17 claim; and

18 (6) "Trust governance document," any document that relates to eligibility or payment
19 levels, including a claims payment matrix, trust distribution procedure, or plan for
20 reorganization, for an asbestos trust.

21 Section 2. That the code be amended by adding a NEW SECTION to read:

22 Not more than thirty days after an asbestos action is filed or not more than thirty days
23 following July 1, 2017, whichever is later, a plaintiff shall:

24 (1) Provide the court and parties with a sworn statement signed by the plaintiff and the

1 plaintiff's counsel, under penalty of perjury, indicating that an investigation of all
2 asbestos trust claims has been conducted and that all asbestos trust claims that can
3 be made by the plaintiff or any person on the plaintiff's behalf have been filed. The
4 sworn statement shall indicate whether there has been a request to defer, delay,
5 suspend, or toll any asbestos trust claim, and provide the disposition of each asbestos
6 trust claim;

7 (2) Provide all parties with any trust claims material, including any material that relates
8 to conditions other than those that are the basis for the asbestos action, material from
9 any law firm connected to the plaintiff in relation to the plaintiff's exposure to
10 asbestos, anyone at a law firm involved in the asbestos action, any referring law firm,
11 and any other firm that has filed an asbestos trust claim for the plaintiff or on the
12 plaintiff's behalf; and

13 (3) If the plaintiff's asbestos trust claim is based on exposure to asbestos through any
14 other person, the plaintiff shall produce all trust claims materials submitted by the
15 other person to any asbestos trust if the materials are available to the plaintiff or the
16 plaintiff's counsel.

17 Section 3. That the code be amended by adding a NEW SECTION to read:

18 A plaintiff may supplement any information or material required under section 2 of this Act
19 not later than thirty days after the plaintiff or any person on the plaintiff's behalf supplements
20 an existing asbestos trust claim, receives any additional information or material related to an
21 asbestos trust claim, or files an additional asbestos trust claim. A court may dismiss any asbestos
22 action if the plaintiff fails to comply with the provisions of this section. An asbestos action may
23 proceed to trial not less than one hundred eighty days after the provisions of this section are met.

24 Section 4. That the code be amended by adding a NEW SECTION to read:

1 A defendant may file a motion for a stay of proceedings not later than sixty days prior to the
2 date of trial or the fifteenth day after the defendant first obtains any information that could
3 support additional trust claims by the plaintiff, whichever is later. The motion shall identify any
4 asbestos trust claim the defendant believes the plaintiff can file and include any information
5 supporting the asbestos trust claim.

6 Section 5. That the code be amended by adding a NEW SECTION to read:

7 Not later than ten days following receipt of the defendant's motion for a stay of proceedings
8 in accordance with section 4 of this Act, the plaintiff shall:

- 9 (1) File any asbestos trust claim;
- 10 (2) File a written response with the court stating why there is insufficient evidence for
11 the plaintiff to file any asbestos trust claim; or
- 12 (3) File a written response with the court requesting a determination that the cost to file
13 any asbestos trust claim exceeds the plaintiff's reasonably anticipated recovery.

14 Section 6. That the code be amended by adding a NEW SECTION to read:

15 If the court determines that there is a sufficient basis for the plaintiff to file an asbestos trust
16 claim identified in the motion to stay under section 5 of this Act, the court shall stay the asbestos
17 action until the plaintiff files the asbestos trust claim and produces any related trust claims
18 material.

19 Section 7. That the code be amended by adding a NEW SECTION to read:

20 If the court determines that the cost of submitting an asbestos trust claim exceeds the
21 plaintiff's reasonably anticipated recovery, the court shall stay the asbestos action until the
22 plaintiff files with the court and provides all parties with a verified statement of the plaintiff's
23 history of exposure, usage, or other connection to asbestos covered by that asbestos trust.

24 Section 8. That the code be amended by adding a NEW SECTION to read:

1 Not less than sixty days after the plaintiff provides any documentation required under
2 section 5 of this Act, the court may schedule the asbestos action for trial.

3 Section 9. That the code be amended by adding a NEW SECTION to read:

4 Any trust claims material or trust governance document is presumed to be relevant and
5 authentic, and is admissible in evidence in an asbestos action. A claim of privilege does not
6 apply to any trust claims material or trust governance document.

7 Section 10. That the code be amended by adding a NEW SECTION to read:

8 A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff
9 may not claim privilege or confidentiality to bar discovery and may provide consent or any other
10 expression of permission that is required by the asbestos trust to release information or material
11 sought by a defendant.

12 Section 11. That the code be amended by adding a NEW SECTION to read:

13 Any trust claims material that is sufficient to entitle a claim to consideration for payment
14 under the applicable trust governance document may be sufficient to support a jury finding that
15 the plaintiff may have been exposed to any product for which the trust was established to
16 provide compensation and that the exposure may be a substantial contributing factor in causing
17 the plaintiff's injury that is the subject of the asbestos action.

18 Section 12. That the code be amended by adding a NEW SECTION to read:

19 Not less than thirty days before the first day of trial in an asbestos action, the court shall
20 enter into the record a document that identifies every asbestos trust claim made by the plaintiff
21 or on the plaintiff's behalf.

22 Section 13. That the code be amended by adding a NEW SECTION to read:

23 If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved,
24 there is a rebuttable presumption that the plaintiff is entitled to, and will receive, the

1 compensation specified in the trust governance document applicable to the plaintiff's claim at
2 the time of trial. The court shall take judicial notice that the trust governance document specifies
3 a compensation amount and payment percentage and shall establish an attributed value to the
4 plaintiff's asbestos trust claim.

5 Section 14. That the code be amended by adding a NEW SECTION to read:

6 On the motion of a defendant or judgment debtor seeking sanctions or other relief in an
7 asbestos action, the court may impose any sanction provided by court rule or law, including
8 vacating a judgment rendered in the action for a plaintiff's failure to comply with any disclosure
9 requirement of this Act.

10 Section 15. That the code be amended by adding a NEW SECTION to read:

11 If the plaintiff or a person on the plaintiff's behalf files an asbestos trust claim after the
12 plaintiff obtains a judgment in an asbestos action and that asbestos trust was in existence at the
13 time the plaintiff obtained the judgment, the trial court, on motion by a defendant or judgment
14 debtor seeking sanctions or other relief, has jurisdiction to reopen the judgment in the asbestos
15 action and adjust the judgment by the amount of any subsequent asbestos trust payment obtained
16 by the plaintiff and to order any other relief to the parties that the court may consider just and
17 proper.

18 Section 16. That the code be amended by adding a NEW SECTION to read:

19 No defendant or judgment debtor may file any motion under section 15 or 16 of this Act
20 more than one year following the date on which the judgment is entered.

21 Section 17. That the code be amended by adding a NEW SECTION to read:

22 This Act applies to any asbestos action filed on or after July 1, 2017, and to any pending
23 asbestos action in which trial has not commenced as of July 1, 2017.