

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

931Y0473

## SENATE JUDICIARY ENGROSSED NO. **SB 138** 2/9/2017

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



1 any other derivative claim made by or on behalf of a person exposed to asbestos or  
2 a representative, spouse, parent, child, or other relative of that person;

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

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

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

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

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

23 Not more than thirty days after an asbestos action is filed, 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 twenty days after the provisions of this section are  
24 met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved,

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

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

7 This Act applies to any asbestos action filed on or after July 1, 2017.