

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

931Y0473

SENATE ENGROSSED NO. **SB 138** - 2/22/2017

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

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,



1 and any other derivative claim made by or on behalf of a person exposed to asbestos
2 or a representative, spouse, parent, child, or other relative of that person. The term
3 does not include a claim for workers' compensation or veterans' benefits;

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

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

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

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

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

24 Not more than one hundred twenty days prior to the date set for trial for each asbestos action

1 filed in this state, the plaintiff shall provide each party with a sworn statement identifying any
2 asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf,
3 including a claim regarding asbestos-related conditions other than those that are the basis for
4 the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust.

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

6 For each asbestos trust claim or potential asbestos trust claim identified in the sworn
7 statement under section 2 of this Act, the statement shall include:

8 (1) The name, address and contact information for the asbestos trust, the amount claimed
9 or to be claimed by the plaintiff, the date the plaintiff filed the claim, the disposition
10 of the claim and whether there has been a request to defer, delay, suspend, or toll the
11 claim; and

12 (2) An attestation from the plaintiff, under penalty of perjury, that the sworn statement
13 is complete and based on a good faith investigation of any potential claim against an
14 asbestos trust.

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

16 The plaintiff shall make available to each party any trust claims material for each asbestos
17 trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf against an
18 asbestos trust, including any asbestos-related disease. The plaintiff shall supplement the
19 information and material provided pursuant to this section within ninety days after the plaintiff
20 files an additional asbestos trust claim, supplements an existing asbestos trust claim, or receives
21 additional information or material related to any claim or potential claim against an asbestos
22 trust. Failure by the plaintiff to make available to all parties any trust claims material required
23 under this section constitutes grounds for the court to extend the trial date in an asbestos action.

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

1 Every trust claims material or trust governance document is presumed to be relevant and
2 authentic and is admissible in evidence. Claims of privilege do not apply to any trust claims
3 material or trust governance document. A defendant in an asbestos action may seek discovery
4 from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery
5 and shall provide consent or other expression of permission that may be required by the asbestos
6 trust to release information or material sought by a defendant.

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

8 A court shall stay an asbestos action if the court finds that the plaintiff has failed to make
9 any disclosure required under this Act within one hundred twenty days before the trial date. If,
10 in any disclosure required under this Act, a plaintiff identifies a potential asbestos trust claim,
11 the judge may stay the asbestos action until the plaintiff files the asbestos trust claim and
12 provides all parties with any trust claims material for the claim. The plaintiff shall also state
13 whether there has been a request to defer, delay, suspend, or toll the claim against the asbestos
14 trust.

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

16 If, not less than ninety days before trial, a defendant identifies an asbestos trust claim not
17 previously identified by the plaintiff that the defendant reasonably believes the plaintiff may file,
18 the defendant shall confer with the plaintiff regarding any additional asbestos trust claim that
19 may be filed by the plaintiff. The defendant may move the court for an order to require the
20 plaintiff to file any additional asbestos trust claim following the meeting under this section. The
21 defendant shall produce or describe any documentation the defendant possesses or of which the
22 defendant is aware in support of the motion.

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

24 Within ten days following receipt of the defendant's motion under section 7 of this Act, the

1 plaintiff shall for each asbestos trust claim identified by the defendant:

- 2 (1) File the asbestos trust claim;
- 3 (2) File a written response with the court setting forth any reason why there is
4 insufficient evidence for the plaintiff to file the asbestos trust claim; or
- 5 (3) File a written response with the court requesting a determination that the plaintiff's
6 expenses, or attorney's fees and expenses, to prepare and file the asbestos trust claim
7 identified in the defendant's motion exceed the plaintiff's reasonably anticipated
8 recovery from the trust.

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

10 If the court determines that there is sufficient basis for the plaintiff to file an additional
11 asbestos trust claim identified by the defendant pursuant to section 7 of this Act, the court shall
12 order the plaintiff to file the asbestos trust claim and shall stay the asbestos action until the
13 plaintiff files the asbestos trust claim and provides all parties with any trust claims material
14 within thirty days before the trial date. If the court determines that the plaintiff's expenses, or
15 attorney's fees and expenses, to prepare and file the asbestos trust claim identified in the
16 defendant's motion under section 7 of this Act exceed the plaintiff's reasonably anticipated
17 recovery from the asbestos trust, the court shall stay the asbestos action until the plaintiff files
18 with the court and provides each party with a verified statement of the plaintiff's history of
19 exposure, usage, or any other connection to asbestos covered by the asbestos trust.

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

21 If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved,
22 the filing of the asbestos trust claim may be considered relevant and admissible evidence.

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

24 A plaintiff who fails to provide any information required under this Act is subject to a

1 sanction as provided in the South Dakota Rules of Civil Procedure and any other relief for a
2 defendant that the court considers just and proper.

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

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