



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3643

Introduced 11/7/2018, by Sen. Jason A. Barickman

SYNOPSIS AS INTRODUCED:

735 ILCS 5/Art. II Pt. 24 heading new
735 ILCS 5/2-2401 new
735 ILCS 5/2-2402 new
735 ILCS 5/2-2403 new
735 ILCS 5/2-2404 new
735 ILCS 5/2-2405 new
735 ILCS 5/2-2406 new

Amends the Civil Practice Law of the Code of Civil Procedure to add a Part concerning asbestos trust claims. Includes a statement of legislative findings and purpose. Defines terms. Provides that within 30 days after an asbestos action is filed, the plaintiff shall: (1) provide all parties with a sworn statement indicating that an investigation has been conducted and that all asbestos trust claims that can be made by the plaintiff have been filed; and (2) provide all parties with all trust claim materials from all law firms connected to the plaintiff in relation to exposure to asbestos. Provides that a plaintiff has a continuing duty to supplement the information and materials within 30 days after the plaintiff supplements an asbestos trust claim, receives additional information or materials related to an asbestos trust claim, or files an additional trust claim. Provides that, not less than 60 days before trial, if a defendant believes the plaintiff has not filed all asbestos trust claims, the defendant may move and the court may enter an order to require the plaintiff to file additional trust claims. Provides that trust claim materials and trust governance documents are presumed to be relevant and authentic, and are admissible in evidence in an asbestos action. Provides that a claim of privilege does not apply to trust claim materials or trust governance documents and that a defendant may seek discovery from an asbestos trust. Provides that a defendant is entitled to a setoff in the amount the plaintiff has received or will receive from an asbestos trust.

LRB100 24097 HEP 43206 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding
5 Part 24 to Article II as follows:

6 (735 ILCS 5/Art. II Pt. 24 heading new)

7 Part 24. Asbestos Trust Claims

8 (735 ILCS 5/2-2401 new)

9 Sec. 2-2401. Findings and purpose.

10 (a) The General Assembly finds that:

11 (1) over 120 employers have declared bankruptcy at
12 least partially due to asbestos-related liability;

13 (2) scores of trusts have been established in
14 bankruptcy proceedings to form a multi-billion dollar
15 compensation system for asbestos claimants outside of the
16 civil courts, and new asbestos trusts continue to be
17 formed;

18 (3) asbestos claimants typically seek compensation
19 from solvent defendants in civil actions and from trusts or
20 claims facilities formed in asbestos bankruptcy
21 proceedings;

22 (4) there is limited transparency between these 2 paths

1 to recovery;

2 (5) an absence of transparency with respect to asbestos
3 bankruptcy trust claims has resulted in the suppression of
4 evidence in asbestos actions;

5 (6) a federal bankruptcy court found that trust claim
6 filings are being manipulated and information withheld in
7 order to inflate recoveries in asbestos actions;

8 (7) the lack of transparency regarding trust claims
9 information harms Illinois employers, their employees,
10 their shareholders, and the communities in which they
11 operate; companies that pay inflated settlements and
12 awards in asbestos cases have fewer resources to pay future
13 claimants and invest in the State's economy; and

14 (8) transparency with respect to asbestos trust claims
15 and claims made in civil asbestos actions promotes the
16 integrity of civil asbestos court proceedings and furthers
17 recovery longevity to help future plaintiffs.

18 (b) It is the purpose of this Part to:

19 (1) provide transparency with respect to asbestos
20 trust claims and claims made in civil asbestos actions; and

21 (2) reduce the opportunity for withholding or
22 suppression of trust-related exposure evidence in asbestos
23 actions.

24 (735 ILCS 5/2-2402 new)

25 Sec. 2-2402. Definitions. As used in this Part:

1 "Asbestos action" means a claim for damages or other relief
2 presented in a civil action arising out of, based on, or
3 related to the health effects of exposure to asbestos and any
4 derivative claim made by or on behalf of a person exposed to
5 asbestos or a representative, spouse, parent, child, or other
6 relative of that person.

7 "Asbestos trust" means a government-approved or
8 court-approved trust, qualified settlement fund, compensation
9 fund, or claims facility created as a result of an
10 administrative or legal action, a court-approved bankruptcy,
11 or pursuant to 11 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other
12 applicable provision of law, that is intended, in whole or in
13 part, to provide compensation to claimants arising out of,
14 based on, or related to the health effects of exposure to
15 asbestos.

16 "Trust claim materials" means a final executed proof of
17 claim and all documents and information submitted to or
18 received from an asbestos trust by the plaintiff, including
19 claim forms and supplementary materials, affidavits,
20 depositions and trial testimony of the plaintiff and others
21 knowledgeable about the plaintiff's exposure history, work
22 history, exposure allegations, and medical and health records,
23 all documents that reflect the status of a claim against an
24 asbestos trust, and all documents relating to the settlement of
25 trust claims.

26 "Trust governance documents" means all documents that

1 relate to eligibility and payment levels, including claims
2 payment matrices, trust distribution procedures, or plans for
3 reorganization, for an asbestos trust.

4 (735 ILCS 5/2-2403 new)

5 Sec. 2-2403. Required disclosures by plaintiff.

6 (a) Within 30 days after an asbestos action is filed, the
7 plaintiff shall:

8 (1) provide all parties with a sworn statement
9 indicating that an investigation has been conducted and
10 that all asbestos trust claims that can be made by the
11 plaintiff have been filed; and

12 (2) provide all parties with all trust claim materials
13 from all law firms connected to the plaintiff in relation
14 to exposure to asbestos.

15 (b) A plaintiff has a continuing duty to supplement the
16 information and materials required under subsection (a) within
17 30 days after the plaintiff supplements an asbestos trust
18 claim, receives additional information or materials related to
19 an asbestos trust claim, or files an additional trust claim.

20 (735 ILCS 5/2-2404 new)

21 Sec. 2-2404. Defendant identification of additional
22 asbestos trust claims.

23 (a) Not less than 60 days before trial, if a defendant
24 believes the plaintiff has not filed all asbestos trust claims

1 as required under Section 2-2403, the defendant may move the
2 court for an order to require the plaintiff to file additional
3 trust claims.

4 (b) If the court determines that there is a sufficient
5 basis for the plaintiff to file an asbestos trust claim
6 identified by the defendant, the court shall stay the action
7 until the plaintiff files the asbestos trust claim and produces
8 all related trust claim materials.

9 (c) An asbestos action may not be set for trial until at
10 least 60 days after the plaintiff complies with this Section.

11 (735 ILCS 5/2-2405 new)

12 Sec. 2-2405. Discovery; use of materials.

13 (a) Trust claim materials and trust governance documents
14 are presumed to be relevant and authentic, and are admissible
15 in evidence in an asbestos action. A claim of privilege does
16 not apply to trust claim materials or trust governance
17 documents.

18 (b) A defendant in an asbestos action may seek discovery
19 from an asbestos trust. The plaintiff may not claim privilege
20 or confidentiality to bar discovery and shall provide consent
21 or other expression of permission that may be required by the
22 asbestos trust to release information and materials sought by a
23 defendant.

24 (735 ILCS 5/2-2406 new)

1 Sec. 2-2406. Setoff. In an asbestos action in which damages
2 are awarded, a defendant is entitled to a setoff in the amount
3 the plaintiff has received from an asbestos trust and, for
4 trust claims not yet paid as of the date of entry of judgment,
5 the amount the plaintiff will receive as specified in the
6 asbestos trust governance documents. If multiple defendants
7 are found liable for damages, the court shall distribute the
8 amount of the setoff proportionally between the defendants,
9 according to the liability of each defendant.