



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0040

Introduced 1/29/2021, 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
735 ILCS 5/2-2407 new

Amends the Civil Practice Law of the Code of Civil Procedure to add a Part concerning asbestos trust claims. Provides that within 30 days after an asbestos action is filed, the plaintiff shall provide all parties with certain disclosures. Provides that a plaintiff has a continuing duty to supplement the information. 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 the court for 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. Provides that a defendant in an asbestos action may seek discovery from an asbestos trust. Provides that in an asbestos action in which damages are awarded, a defendant is entitled to a setoff in the amount the plaintiff has received from an asbestos trust and the amount the plaintiff will receive as specified in the asbestos trust governance documents. Provides that within 30 days after an asbestos action is filed, the plaintiff shall provide all parties with a sworn information form specifying the evidence that provides the basis for each claim against each defendant.

LRB102 03814 LNS 13827 b

A BILL FOR

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
5 adding Part 24 as follows:

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

7 Part 24. Asbestos Actions

8 (735 ILCS 5/2-2401 new)

9 Sec. 2-2401. Definitions. As used in this Part:

10 "Asbestos action" means a claim for damages or other
11 relief presented in a civil action arising out of, based on, or
12 related to the health effects of exposure to asbestos and any
13 derivative claim made by or on behalf of a person exposed to
14 asbestos or a representative, spouse, parent, child, or other
15 relative of that person.

16 "Asbestos trust" means a government-approved or
17 court-approved trust, qualified settlement fund, compensation
18 fund, or claims facility created as a result of an
19 administrative or legal action, a court-approved bankruptcy,
20 or pursuant to 11 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other
21 applicable provision of law, that is intended, in whole or in
22 part, to provide compensation to claimants arising out of,

1 based on, or related to the health effects of exposure to
2 asbestos.

3 "Trust claim materials" means a final executed proof of
4 claim and all documents and information submitted to or
5 received from an asbestos trust by the plaintiff, including
6 claim forms and supplementary materials, affidavits,
7 depositions and trial testimony of the plaintiff and others
8 knowledgeable about the plaintiff's exposure history, work
9 history, exposure allegations, medical and health records, all
10 documents that reflect the status of a claim against an
11 asbestos trust, and all documents relating to the settlement
12 of trust claims.

13 "Trust governance documents" means all documents that
14 relate to eligibility and payment levels, including claims
15 payment matrices, trust distribution procedures, or plans for
16 reorganization, for an asbestos trust.

17 (735 ILCS 5/2-2402 new)

18 Sec. 2-2402. Required disclosures by plaintiff.

19 (a) Within 30 days after an asbestos action is filed, the
20 plaintiff shall provide all parties with:

21 (1) a sworn statement indicating that an investigation
22 has been conducted and that all asbestos trust claims that
23 can be made by the plaintiff have been filed; and

24 (2) all trust claim materials from all law firms
25 connected to the plaintiff in relation to exposure to

1 asbestos.

2 (b) A plaintiff has a continuing duty to supplement the
3 information and materials required under subsection (a) within
4 30 days after the plaintiff supplements an asbestos trust
5 claim, receives additional information or materials related to
6 an asbestos trust claim, or files an additional trust claim.

7 (735 ILCS 5/2-2403 new)

8 Sec. 2-2403. Defendant identification of additional
9 asbestos trust claims.

10 (a) Not less than 60 days before trial, if a defendant
11 believes the plaintiff has not filed all asbestos trust claims
12 as required under Section 2-2402, the defendant may move the
13 court for an order to require the plaintiff to file additional
14 trust claims.

15 (b) If the court determines that there is a sufficient
16 basis for the plaintiff to file an asbestos trust claim
17 identified by the defendant, the court shall stay the action
18 until the plaintiff files the asbestos trust claim and
19 produces all related trust claim materials.

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

22 (735 ILCS 5/2-2404 new)

23 Sec. 2-2404. Discovery; use of materials.

24 (a) Trust claim materials and trust governance documents

1 are presumed to be relevant and authentic, and are admissible
2 in evidence in an asbestos action. A claim of privilege does
3 not apply to trust claim materials or trust governance
4 documents.

5 (b) A defendant in an asbestos action may seek discovery
6 from an asbestos trust. The plaintiff may not claim privilege
7 or confidentiality to bar discovery and shall provide consent
8 or other expression of permission that may be required by the
9 asbestos trust to release information and materials sought by
10 a defendant.

11 (735 ILCS 5/2-2405 new)

12 Sec. 2-2405. Setoff. In an asbestos action in which
13 damages are awarded, a defendant is entitled to a setoff in the
14 amount the plaintiff has received from an asbestos trust and,
15 for trust claims not yet paid as of the date of entry of
16 judgment, the amount the plaintiff will receive as specified
17 in the asbestos trust governance documents. If multiple
18 defendants are found liable for damages, the court shall
19 distribute the amount of the setoff proportionally between the
20 defendants, according to the liability of each defendant.

21 (735 ILCS 5/2-2406 new)

22 Sec. 2-2406. Asbestos action; filing of sworn information
23 form; dismissal without prejudice.

24 (a) Within 30 days after an asbestos action is filed, the

1 plaintiff shall provide all parties with a sworn information
2 form specifying the evidence that provides the basis for each
3 claim against each defendant. The sworn information form is in
4 addition to any information required to be disclosed under
5 Section 2-2402 and shall include all of the following with
6 specificity:

7 (1) the name, address, date of birth, marital status,
8 occupation, smoking history, current and past work sites,
9 and current and past employers of the exposed person and
10 any person through whom the exposed person was exposed to
11 asbestos;

12 (2) each person through whom the exposed person was
13 exposed to asbestos and the exposed person's relationship
14 to each such person;

15 (3) each asbestos-containing product to which the
16 person was exposed and each physical location at which the
17 person was exposed to asbestos, or the other person was
18 exposed if exposure was through another person;

19 (4) the identity of the manufacturer or seller of the
20 specific asbestos product for each exposure;

21 (5) the specific location and manner of each exposure,
22 including the specific location and manner of each
23 exposure for any person through whom the exposed person
24 was exposed to asbestos;

25 (6) the beginning and ending dates of each exposure,
26 the frequency and length of each exposure, and the

1 proximity of the asbestos-containing product or its use to
2 the exposed person and any person through whom the exposed
3 person was exposed to asbestos;

4 (7) the specific asbestos-related disease claimed to
5 exist;

6 (8) a certification that any claim that can be made by
7 the plaintiff with a bankruptcy trust concerning any
8 asbestos injury has been filed; and

9 (9) any supporting documentation relating to the
10 information required under this Section.

11 (b) A plaintiff has a continuing duty to supplement the
12 information disclosed under subsection (a).

13 (c) The court shall dismiss a plaintiff's asbestos claim
14 without prejudice as to any defendant whose product or
15 premises is not identified in the required disclosures set
16 forth in subsection (a).

17 (d) The court shall dismiss a plaintiff's asbestos claim
18 without prejudice as to all defendants if a plaintiff fails to
19 comply with this Section.

20 (735 ILCS 5/2-2407 new)

21 Sec. 2-2407. Applicability. This Part applies to asbestos
22 actions that are filed on or after the effective date of this
23 Part.