

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 421**

Introduced by Hilgers, 21.

Read first time January 18, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to asbestos; to adopt the Asbestos Trust

2 Claims Transparency Act.

3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 7 of this act shall be known and may be  
2 cited as the Asbestos Trust Claims Transparency Act.

3           Sec. 2. For purposes of the Asbestos Trust Claims Transparency Act:

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

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

16           (3) Trust claim materials means a final executed proof of claim and  
17 all documents and information submitted to or received from an asbestos  
18 trust by the plaintiff in an asbestos action, including:

19           (a) Claim forms and supplementary materials, affidavits,  
20 depositions, medical and health records, and trial testimony of the  
21 plaintiff and others knowledgeable about the plaintiff's exposure  
22 history, work history, and exposure allegations; and

23           (b) All documents that reflect the status of a claim against an  
24 asbestos trust and, if the trust claim has been resolved, all documents  
25 relating to the resolution of the trust claim; and

26           (4) Trust governance documents means all documents that relate to  
27 eligibility and payment levels for an asbestos trust, including claims  
28 payment matrices, trust distribution procedures, or plans for  
29 reorganization.

30           Sec. 3. (1) Within thirty days after filing an asbestos action, the  
31 plaintiff shall:

1       (a) File all available asbestos trust claims and provide all parties  
2 with a sworn statement indicating that an investigation has been  
3 conducted and that all asbestos trust claims that can be made by the  
4 plaintiff have been filed. A deferral or placeholder claim that is  
5 missing documentation for the asbestos trust to pay the claim does not  
6 meet the requirements of this subdivision;

7       (b) Provide all parties with all trust claim materials from the  
8 plaintiff and all lawyers, law firms, or other authorized representatives  
9 retained by or on behalf of the plaintiff relating to exposure to  
10 asbestos;

11       (c) If the plaintiff's asbestos trust claim is based on exposure to  
12 asbestos carried on the person or clothing of another individual, produce  
13 all trust claim materials submitted by the other individual to any  
14 asbestos trust if the materials are available to the plaintiff or  
15 plaintiff's counsel or other authorized representatives; and

16       (d) Provide an affidavit certifying that any trust claim materials  
17 provided under subdivisions (1)(b) and (1)(c) of this section are true  
18 and complete.

19       (2) A plaintiff shall supplement the information, materials,  
20 declarations, and affidavits required under subsection (1) of this  
21 section within thirty days after the plaintiff supplements an asbestos  
22 trust claim, receives additional trust claim materials or information  
23 related to an asbestos trust claim, or files an additional trust claim.

24       Sec. 4. (1) Not less than sixty days before trial of an asbestos  
25 action, if a defendant believes the plaintiff has not filed all asbestos  
26 trust claims as required by section 3 of this act, the defendant may move  
27 the court for an order to require the plaintiff to file additional trust  
28 claims. The motion shall identify the additional asbestos trust claims  
29 the defendant believes the plaintiff is eligible to file.

30       (2) If the court determines that there is a sufficient basis for the  
31 plaintiff to file an asbestos trust claim identified by the defendant,

1 the court shall stay the asbestos action until the plaintiff files the  
2 asbestos trust claim and produces all related trust claim materials and  
3 an affidavit that all such trust claim materials are true and complete.  
4 The court shall not set the asbestos action for trial earlier than sixty  
5 days after the plaintiff complies with this section.

6       Sec. 5. (1) Trust claim materials and trust governance documents  
7 are admissible as evidence in an asbestos action and are presumed to be  
8 relevant and authentic. A claim of privilege shall not apply to trust  
9 claim materials or trust governance documents.

10       (2) A defendant in an asbestos action may seek discovery from an  
11 asbestos trust. The plaintiff may not claim privilege or confidentiality  
12 to bar discovery of trust claim materials or trust governance documents  
13 and shall provide consent or any other expression of permission that may  
14 be required by the asbestos trust to release information and materials  
15 sought by a defendant.

16       Sec. 6. In an asbestos action in which damages are awarded and  
17 setoffs are permitted under applicable law, a defendant is entitled to a  
18 setoff in the amount the plaintiff has received from an asbestos trust  
19 and, for trust claims not yet paid as of the date of entry of judgment,  
20 the amount the plaintiff will receive as specified in the asbestos trust  
21 governance documents. If multiple defendants are found liable for  
22 damages, the court shall distribute the amount of setoff proportionally  
23 between the defendants according to the liability of each defendant.

24       Sec. 7. The Asbestos Trust Claims Transparency Act applies to all  
25 asbestos actions filed on or after the effective date of this act.