

AMENDMENTS TO LB340

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

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

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

6 (1) Asbestos action means a civil action arising out of, based on,
7 or related to the health effects of exposure to asbestos and any
8 derivative claim made by or on behalf of a person exposed to asbestos or
9 a representative, spouse, parent, child, or other relative of such
10 person;

11 (2) Asbestos trust means a government-approved or court-approved
12 trust, qualified settlement fund, compensation fund, or claims facility
13 that is:

14 (a) Created as a result of an administrative or legal action, a
15 court-approved bankruptcy, or pursuant to 11 U.S.C. 524(g) or 11 U.S.C.
16 1121(a) or other applicable provision of law; and

17 (b) Intended to provide compensation for claims arising out of,
18 based on, or related to the health effects of exposure to asbestos;

19 (3) Trust claim materials means a final executed proof of claim and
20 documents or information submitted to or received from an asbestos trust,
21 including:

22 (a) Claim forms and supplementary materials, proofs of claim,
23 affidavits, depositions, medical and health records, trial testimony,
24 work history, and exposure allegations; and

25 (b) Documents that reflect the status of a claim against an asbestos
26 trust and, if the trust claim has been resolved, documents relating to
27 the resolution of the trust claim; and

1 (4) Trust governance documents means documents that relate to
2 eligibility and payment levels for an asbestos trust, including claims
3 payment matrices, trust distribution procedures, or plans for
4 reorganization.

5 **Sec. 3.** (1) Within thirty days after filing an asbestos action, the
6 claimant shall submit all available asbestos trust claims, produce all
7 trust claims materials, and file and provide all parties with an
8 affidavit indicating that all asbestos trust claims that can be made by
9 the claimant have been filed and that all trust claims materials produced
10 by the claimant are true and complete. A deferral or placeholder claim
11 that is missing necessary documentation for the asbestos trust to pay the
12 claim does not meet the requirements of this section. The claimant shall
13 produce all trust claims filed by a person other than the claimant if the
14 asbestos action is based on exposure to asbestos through that person and
15 the materials are available to the claimant or claimant's counsel.

16 (2) A claimant shall supplement the information and materials
17 required under subsection (1) of this section after supplementing an
18 asbestos trust claim, receiving additional information or materials
19 related to an asbestos trust claim, or filing an additional trust claim.

20 **Sec. 4.** (1) Not less than sixty days before trial of an asbestos
21 action, if a defendant believes the claimant has not filed all asbestos
22 trust claims as required by section 3 of this act, the defendant shall
23 meet and confer with the claimant's counsel, or with the claimant if the
24 claimant is not represented by counsel, to discuss why the defendant
25 believes the claimant is eligible to file an additional trust claim.
26 Thereafter, the defendant may move the court for an order to require the
27 claimant to file the additional trust claims the defendant believes the
28 claimant is eligible to file. The defendant shall produce or describe the
29 documentation it possesses or is aware of in support of the motion.

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

1 court shall order the claimant to file the asbestos trust claim, produce
2 all related trust claim materials, and produce an affidavit stating that
3 all such materials are true and complete. The court shall not set the
4 asbestos action for trial earlier than ninety days after the claimant
5 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. No claims of privilege apply to trust claim
9 materials or trust governance documents.

10 (2) Notwithstanding subsection (1) of this section, a jury shall not
11 be informed of the specific amount of consideration paid by an asbestos
12 trust to a claimant in settlement of a claim.

13 (3) A defendant in an asbestos action may seek discovery from an
14 asbestos trust. The claimant may not claim privilege or confidentiality
15 to bar discovery and shall provide consent or other expression of
16 permission that may be required by the asbestos trust to release
17 information and materials sought by a defendant.

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

26 **Sec. 7.** The Asbestos Trust Claims Transparency Act applies to
27 asbestos actions filed on or after the effective date of this act.

28 **Sec. 8.** Sections 8 to 16 of this act shall be known and may be
29 cited as the Asbestos Claims Priorities and Over-Naming Reform Act.

30 **Sec. 9.** For purposes of the Asbestos Claims Priorities and Over-
31 Naming Reform Act:

1 (1) AMA Guides means the sixth edition of the American Medical
2 Association's Guides to the Evaluation of Permanent Impairment;

3 (2) Asbestos action means a civil action arising out of, based on,
4 or related to the health effects of exposure to asbestos and any
5 derivative claim made by or on behalf of a person exposed to asbestos or
6 a representative, spouse, parent, child, or other relative of such
7 person;

8 (3) Asbestosis means bilateral diffuse interstitial fibrosis of the
9 lungs caused by inhalation of asbestos fibers;

10 (4) Board-certified in internal medicine means a licensed physician
11 who is certified by the American Board of Internal Medicine or the
12 American Osteopathic Board of Internal Medicine;

13 (5) Board-certified in occupational medicine means a licensed
14 physician who is certified in the specialty of occupational medicine by
15 the American Board of Preventive Medicine or the specialty of
16 occupational/environmental medicine by the American Osteopathic Board of
17 Preventive Medicine;

18 (6) Board-certified in pathology means a licensed physician who
19 holds primary certification in anatomic pathology or clinical pathology
20 from the American Board of Pathology or the American Osteopathic Board of
21 Pathology and whose professional practice is principally in the field of
22 pathology and involves regular evaluation of pathology materials obtained
23 from surgical or postmortem specimens;

24 (7) Board-certified in pulmonary medicine means a licensed physician
25 who is certified in the specialty of pulmonary medicine by the American
26 Board of Internal Medicine or the American Osteopathic Board of Internal
27 Medicine;

28 (8) Certified B Reader means a physician who is certified as a B
29 Reader by the National Institute for Occupational Safety and Health;

30 (9) Chest X-ray means a chest film taken in accordance with
31 applicable state and federal regulatory standards and taken in the

1 posterior-anterior view;

2 (10) FEV1 means the maximal volume of air expelled in one second
3 during performance of spirometry;

4 (11) FEV1/FVC means the ratio that is calculated from FEV1 divided
5 by FVC;

6 (12) FVC means the maximal volume of air expired with maximum effort
7 from a position of full inspiration;

8 (13) ILO system means the radiological ratings and system for the
9 classification of chest X-rays provided in the International Labour
10 Organization's Guidelines for the Use of ILO International Classification
11 of Radiographs of Pneumoconioses (2011);

12 (14) Official technical statements of the American Thoracic Society
13 means the official technical statements from the American Thoracic
14 Society, including Standardization of Spirometry (2019), Standardization
15 of the Measurement of Lung Volumes (2005), Standards for Single-breath
16 Carbon Monoxide Uptake in the Lung (2017), and Interpretive Strategies
17 for Routine Lung Function Tests (2021);

18 (15) Pathological evidence of asbestosis means a statement by a
19 board-certified pathologist that more than one representative section of
20 lung tissue uninvolved with any other disease process demonstrates a
21 pattern of peribronchiolar or parenchymal scarring in the presence of
22 characteristic asbestos bodies and there is no other more likely
23 explanation for the presence of the fibrosis;

24 (16) Plethysmography means the test for determining lung volume in
25 which the exposed person is enclosed in a chamber equipped to measure
26 pressure, flow, or volume change;

27 (17) Predicted lower limit of normal means the fifth percentile of
28 healthy populations based on age, height, and gender as referenced in the
29 AMA Guides;

30 (18) Pulmonary function test means spirometry, lung volume testing,
31 and diffusion capacity testing, including appropriate measurements,

1 quality control data, and graphs, performed in accordance with the
2 methods of calibration and techniques provided in the AMA Guides and the
3 official technical statements of the American Thoracic Society;

4 (19) Qualified physician means a licensed physician who is board-
5 certified in internal medicine, occupational medicine, pathology, or
6 pulmonary medicine, as appropriate to the diagnostic specialty in
7 question, and who:

8 (a) Conducted a physical examination of the exposed person and took
9 a detailed occupational, exposure, medical, smoking, and social history
10 or, if the exposed person is deceased, reviewed the pathology material
11 and took a detailed history from the person most knowledgeable about the
12 information forming the basis of the asbestos action;

13 (b) Treated the exposed person, and had a doctor-patient
14 relationship with the exposed person at the time of the physical
15 examination, or in the case of a board-certified pathologist, examined
16 tissue samples or pathological slides of the exposed person;

17 (c) Has not relied on any examinations, tests, radiographs, reports,
18 or opinions of any doctor, clinic, laboratory, or testing company that
19 performed an examination, test, radiograph, or screening of the exposed
20 person in violation of a law, regulation, licensing requirement, or
21 medical code of practice of the state in which the examination, test, or
22 screening was conducted; and

23 (d) Prepared or directly supervised the preparation and final review
24 of a medical report under the Asbestos Claims Priorities and Over-Naming
25 Reform Act;

26 (20) Radiological evidence of asbestosis means a quality 1 or 2
27 chest X-ray under the ILO system showing bilateral small, irregular
28 opacities (s, t, or u) occurring primarily in the lower lung zones graded
29 by a certified B Reader as at least 1/1 on the ILO system;

30 (21) Radiological evidence of diffuse bilateral pleural thickening
31 means a quality 1 or 2 chest X-ray under the ILO system showing diffuse

1 bilateral pleural thickening of at least b2 on the ILO system and
2 blunting of at least one costophrenic angle as classified by a certified
3 B Reader;

4 (22) Spirometry means a test of air capacity of the lung through a
5 spirometer to measure the volume of air inspired and expired;

6 (23) Supporting test results means a report by a certified B Reader,
7 X-ray examinations, diagnostic imaging of the chest, pathology reports,
8 pulmonary function tests, and any other tests reviewed by the diagnosing
9 physician or a qualified physician in reaching the physician's
10 conclusions;

11 (24) Timed gas dilution means a method for measuring total lung
12 capacity in which the subject breathes into a spirometer containing a
13 known concentration of an inert and insoluble gas for a specific time,
14 and the concentration of that inert and insoluble gas in the lung is
15 compared to the concentration of that type of gas in the spirometer; and

16 (25) Total lung capacity means the volume of gas contained in the
17 lungs at the end of a maximal inspiration.

18 **Sec. 10.** (1) Within sixty days after filing an asbestos action, the
19 claimant shall file and provide all parties with an affidavit specifying
20 the evidence that provides the basis for each claim against each
21 defendant. The affidavit shall include the following with specificity:

22 (a) The name, address, date of birth, marital status, occupation,
23 smoking history, current and past worksites, and current and past
24 employers of the exposed person and any person through whom the exposed
25 person alleges exposure to asbestos;

26 (b) The name and address of each person who is knowledgeable about
27 each exposure and the exposed person's relationship to the person;

28 (c) The manufacturer and seller of each asbestos-containing product
29 to which the exposed person was exposed or the other person was exposed
30 if exposure was through another person;

31 (d) The sites and location at the sites that establish the direct

1 connection between the exposed person, or the other person if exposure
2 was through another person, and each defendant;

3 (e) The beginning and ending dates of each exposure, the manner of
4 each exposure, the frequency and length of each exposure, and the
5 proximity of the asbestos-containing product or its use to the exposed
6 person and each person through whom the exposed person alleges exposure
7 to asbestos;

8 (f) The asbestos-related disease that is alleged; and

9 (g) Any supporting documentation relating to the information
10 required under this section.

11 (2) A claimant has a continuing duty to supplement the information
12 required to be disclosed in subsection (1) of this section.

13 (3) Discovery shall not commence against a defendant in an asbestos
14 action until the defendant's product or premises is specifically
15 identified in the disclosures required by subsection (1) of this section.

16 (4) The court, on motion by a defendant, shall dismiss an asbestos
17 action without prejudice (a) as to any defendant whose product or
18 premises is not specifically identified in the disclosures required by
19 subsection (1) of this section or (b) as to the moving defendant or as to
20 all defendants, as applicable, if the claimant fails to comply with this
21 section.

22 **Sec. 11.** (1) In addition to the affidavit required by section 10 of
23 this act, within thirty days after filing an asbestos action related to a
24 nonmalignant asbestos-related condition, the claimant shall file and
25 provide all parties with a detailed narrative medical report signed by a
26 qualified physician and accompanied by supporting test results
27 constituting prima facie evidence the exposed person has a physical
28 impairment for which exposure to asbestos was a substantial contributing
29 factor.

30 (2) A defendant shall have a reasonable opportunity to challenge the
31 adequacy of the prima facie evidence. The court shall dismiss the

1 asbestos action without prejudice if the claimant fails to comply with
2 the requirements of the Asbestos Claims Priorities and Over-Naming Reform
3 Act or fails to make the prima facie showing required by the act.

4 **Sec. 12.** To make the prima facie showing required by section 11 of
5 this act in an asbestos action related to a nonmalignant asbestos-related
6 condition, the detailed narrative medical report signed by a qualified
7 physician with supporting test results shall include the following:

8 (1) Radiological or pathological evidence of asbestosis or
9 radiological evidence of diffuse bilateral pleural thickening or a high-
10 resolution computed tomography scan showing evidence of asbestosis or
11 diffuse pleural thickening;

12 (2) A detailed occupational and exposure history from the exposed
13 person or, if that person is deceased, from the person most knowledgeable
14 about the exposures that form the basis of the action, including the
15 exposed person's places of employment and exposures to airborne
16 contaminants and whether each place of employment involved exposures to
17 airborne contaminants, including asbestos fibers or other disease-causing
18 dusts, that may cause pulmonary impairment, and the nature, duration, and
19 level of any exposure;

20 (3) A detailed medical, social, and smoking history from the exposed
21 person or, if that person is deceased, from the person most
22 knowledgeable, including a thorough review of the past and present
23 medical problems of the exposed person;

24 (4) Evidence verifying that at least fifteen years have elapsed
25 between the exposed person's date of first exposure to asbestos and the
26 date of diagnosis;

27 (5) Evidence that the exposed person has, or the deceased person
28 had, a permanent respiratory impairment rating of at least Class 2 as
29 defined by and evaluated in accordance with the AMA Guides;

30 (6) Evidence that asbestosis or diffuse bilateral pleural
31 thickening, rather than chronic obstructive pulmonary disease, is a

1 substantial contributing factor to the exposed person's physical
2 impairment, based on a determination the exposed person has any of the
3 following:

4 (a) FVC below the predicted lower limit of normal and FEV1/FVC ratio
5 (using actual values) equal to or above the predicted lower limit of
6 normal;

7 (b) Total lung capacity, by plethysmography or timed gas dilution,
8 below the predicted lower limit of normal; or

9 (c) A chest X-ray showing bilateral small, irregular opacities (s,
10 t, or u) graded by a certified B Reader as at least 2/1 on the ILO
11 system; and

12 (7) A statement from the qualified physician that exposure to
13 asbestos was a substantial contributing factor to the exposed person's
14 physical impairment and that such physical impairment was likely not the
15 result of other causes. A statement from the qualified physician that the
16 exposed person's physical impairment is "consistent with exposure to
17 asbestos" or "compatible with exposure to asbestos", or words to that
18 effect, shall not satisfy this section.

19 **Sec. 13.** (1) Evidence relating to the prima facie showings required
20 under the Asbestos Claims Priorities and Over-Naming Reform Act does not
21 create a presumption the exposed person has an asbestos-related
22 impairment and is not conclusive as to the liability of any defendant.

23 (2) Evidence shall not be offered at trial and the jury shall not be
24 informed of:

25 (a) The grant or denial of a motion to dismiss an asbestos action
26 under the act; or

27 (b) The provisions of the act with respect to what constitutes a
28 prima facie showing of asbestos impairment.

29 (3) Evidence relating to physical impairment offered in an asbestos
30 action:

31 (a) Must comply with the quality controls, equipment requirements,

1 methods of calibration, and techniques set forth in the AMA Guides and
2 official technical statements of the American Thoracic Society;

3 (b) Shall not be based on testing or examinations that violate a
4 law, regulation, licensing requirement, or medical code of practice of
5 this state or of the state in which the examination or test was
6 conducted; and

7 (c) Shall not be obtained under the condition the exposed person
8 retains the services of an attorney or law firm.

9 **Sec. 14.** Until a court enters an order determining that the exposed
10 person has established prima facie evidence of impairment, an asbestos
11 action is not subject to discovery, except discovery related to
12 establishing or challenging the prima facie evidence.

13 **Sec. 15.** A court may consolidate for trial any number and type of
14 asbestos actions with the consent of all parties. In the absence of such
15 consent, the court may consolidate for trial only asbestos actions
16 relating to the exposed person and members of that person's household.

17 **Sec. 16.** The Asbestos Claims Priorities and Over-Naming Reform Act
18 applies to asbestos actions filed on or after the effective date of this
19 act.

20 **Sec. 17.** Section 25-224, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 25-224 (1) All product liability actions, except one governed by
23 subsection (5) of this section, shall be commenced within four years next
24 after the date on which the death, injury, or damage complained of
25 occurs.

26 (2)(a) Notwithstanding subsection (1) of this section or any other
27 statutory provision to the contrary, any product liability action, except
28 one governed by section 2-725, Uniform Commercial Code or by subsection
29 (5) of this section, shall be commenced as follows:

30 (i) For products manufactured in Nebraska, within ten years after
31 the date the product which allegedly caused the personal injury, death,

1 or damage was first sold or leased for use or consumption; or

2 (ii) For products manufactured outside Nebraska, within the time
3 allowed by the applicable statute of repose, if any, of the state or
4 country where the product was manufactured, but in no event less than ten
5 years. If the state or country where the product was manufactured does
6 not have an applicable statute of repose, then the only limitation upon
7 the commencement of an action for product liability shall be as set forth
8 in subsection (1) of this section.

9 (b) If the changes made to this subsection by Laws 2001, LB 489, are
10 declared invalid or unconstitutional, this subsection as it existed prior
11 to September 1, 2001, shall be deemed in full force and effect and shall
12 apply to all claims in which a final order has not been entered.

13 (3) The limitations contained in subsection (1), (2), or (5) of this
14 section shall not be applicable to indemnity or contribution actions
15 brought by a manufacturer or seller of a product against a person who is
16 or may be liable to such manufacturer or seller for all or any portion of
17 any judgment rendered against a manufacturer or seller.

18 (4) Notwithstanding the provisions of subsections (1) and (2) of
19 this section, any cause of action or claim which any person may have on
20 July 22, 1978, may be brought not later than two years following such
21 date.

22 (5)(a) ~~(5)~~ Any action to recover damages based on injury allegedly
23 resulting from exposure to asbestos composed of chrysotile, amosite,
24 crocidolite, tremolite, anthrophyllite, actinolite, or any combination
25 thereof, shall be commenced within four years after the injured person
26 has been informed of discovery of the injury by competent medical
27 authority and that such injury was caused by exposure to asbestos as
28 described herein, or within four years after the discovery of facts which
29 would reasonably lead to such discovery, whichever is earlier.

30 (b) No action commenced under this subsection based on the doctrine
31 of strict liability in tort shall be commenced or maintained against any

1 seller of a product which is alleged to contain or possess a defective
2 condition unreasonably dangerous to the buyer, user, or consumer unless
3 such seller is also the manufacturer of such product or the manufacturer
4 of the part thereof claimed to be defective.

5 (c) Nothing in this subsection shall be construed to permit an
6 action to be brought based on an injury described in this subsection
7 discovered more than two years prior to August 30, 1981.

8 (d) The period of limitations for an asbestos action as defined in
9 the Asbestos Claims Priorities and Over-Naming Reform Act for any non-
10 malignant asbestos-related condition that is not barred as of the
11 effective date of this act shall be tolled until the date the exposed
12 person receives or reasonably could have received a diagnosis of
13 asbestos-related impairment sufficient to satisfy the prima facie
14 evidence requirements of the act or the exposed person's date of death,
15 whichever is earlier.

16 **Sec. 18.** Original section 25-224, Reissue Revised Statutes of
17 Nebraska, is repealed.