

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 340

Introduced by Hallstrom, 1.

Read first time January 16, 2025

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to asbestos; to amend section 25-224, Reissue
- 2 Revised Statutes of Nebraska; to adopt the Asbestos Trust Claims
- 3 Transparency Act and the Asbestos Claims Priorities and Over-Naming
- 4 Reform Act; to change provisions relating to a statute of
- 5 limitations; and to repeal the original section.
- 6 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 civil action arising out of, based on,
5 or related to the health effects of exposure to asbestos and any
6 derivative claim made by or on behalf of a person exposed to asbestos or
7 a representative, spouse, parent, child, or other relative of such
8 person;

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

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

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

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

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

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

26 (4) Trust governance documents means 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 claimant shall submit all available asbestos trust claims, produce all

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

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

14 **Sec. 4.** (1) Not less than sixty days before trial of an asbestos
15 action, if a defendant believes the claimant has not filed all asbestos
16 trust claims as required by section 3 of this act, the defendant may move
17 the court for an order to require the claimant to file the additional
18 trust claims the defendant believes the claimant is eligible to file.

19 (2) If the court determines there is a sufficient basis for the
20 claimant to file an asbestos trust claim identified by the defendant, the
21 court shall order the claimant to file the asbestos trust claim, produce
22 all related trust claim materials, and produce an affidavit stating that
23 all such materials are true and complete. The court shall not set the
24 asbestos action for trial earlier than ninety days after the claimant
25 complies with this section.

26 **Sec. 5.** (1) Trust claim materials and trust governance documents
27 are admissible as evidence in an asbestos action and are presumed to be
28 relevant and authentic. No claims of privilege apply to trust claim
29 materials or trust governance documents.

30 (2) A defendant in an asbestos action may seek discovery from an
31 asbestos trust. The claimant may not claim privilege or confidentiality

1 to bar discovery and shall provide consent or other expression of
2 permission that may be required by the asbestos trust to release
3 information and materials sought by a defendant.

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

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

14 **Sec. 8.** Sections 8 to 17 of this act shall be known and may be
15 cited as the Asbestos Claims Priorities and Over-Naming Reform Act.

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

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

20 (2) Asbestos action means a civil action arising out of, based on,
21 or related to the health effects of exposure to asbestos and any
22 derivative claim made by or on behalf of a person exposed to asbestos or
23 a representative, spouse, parent, child, or other relative of such
24 person;

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

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

30 (5) Board-certified in occupational medicine means a licensed
31 physician who is certified in the specialty of occupational medicine by

1 the American Board of Preventive Medicine or the specialty of
2 occupational/environmental medicine by the American Osteopathic Board of
3 Preventive Medicine;

4 (6) Board-certified in oncology means a licensed physician who is
5 certified in the subspecialty of medical oncology by the American Board
6 of Internal Medicine or the American Osteopathic Board of Internal
7 Medicine;

8 (7) Board-certified in pathology means a licensed physician who
9 holds primary certification in anatomic pathology or clinical pathology
10 from the American Board of Pathology or the American Osteopathic Board of
11 Pathology and whose professional practice is principally in the field of
12 pathology and involves regular evaluation of pathology materials obtained
13 from surgical or postmortem specimens;

14 (8) Board-certified in pulmonary medicine means a licensed physician
15 who is certified in the specialty of pulmonary medicine by the American
16 Board of Internal Medicine or the American Osteopathic Board of Internal
17 Medicine;

18 (9) Certified B Reader means a physician who is certified as a B
19 Reader by the National Institute for Occupational Safety and Health;

20 (10) Chest X-ray means a chest film taken in accordance with
21 applicable state and federal regulatory standards and taken in the
22 posterior-anterior view;

23 (11) FEV1 means the maximal volume of air expelled in one second
24 during performance of spirometry;

25 (12) FEV1/FVC means the ratio that is calculated from FEV1 divided
26 by FVC;

27 (13) FVC means the maximal volume of air expired with maximum effort
28 from a position of full inspiration;

29 (14) ILO system means the radiological ratings and system for the
30 classification of chest X-rays provided in the International Labour
31 Organization's Guidelines for the Use of ILO International Classification

1 of Radiographs of Pneumoconioses (2011);

2 (15) Official technical statements of the American Thoracic Society
3 means the official technical statements from the American Thoracic
4 Society, including Standardization of Spirometry (2019), Standardization
5 of the Measurement of Lung Volumes (2005), Standards for Single-breath
6 Carbon Monoxide Uptake in the Lung (2017), and Interpretive Strategies
7 for Routine Lung Function Tests (2021);

8 (16) Pathological evidence of asbestosis means a statement by a
9 board-certified pathologist that more than one representative section of
10 lung tissue uninvolved with any other disease process demonstrates a
11 pattern of peribronchiolar or parenchymal scarring in the presence of
12 characteristic asbestos bodies and there is no other more likely
13 explanation for the presence of the fibrosis;

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

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

20 (19) Pulmonary function test means spirometry, lung volume testing,
21 and diffusion capacity testing, including appropriate measurements,
22 quality control data, and graphs, performed in accordance with the
23 methods of calibration and techniques provided in the AMA Guides and the
24 official technical statements of the American Thoracic Society;

25 (20) Qualified physician means a licensed physician who is board-
26 certified in internal medicine, occupational medicine, oncology,
27 pathology, or pulmonary medicine, as appropriate to the diagnostic
28 specialty in question, and who:

29 (a) Conducted a physical examination of the exposed person and took
30 a detailed occupational, exposure, medical, smoking, and social history
31 or, if the exposed person is deceased, reviewed the pathology material

1 and took a detailed history from the person most knowledgeable about the
2 information forming the basis of the asbestos action;

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

7 (c) Has not relied on any examinations, tests, radiographs, reports,
8 or opinions of any doctor, clinic, laboratory, or testing company that
9 performed an examination, test, radiograph, or screening of the exposed
10 person in violation of a law, regulation, licensing requirement, or
11 medical code of practice of the state in which the examination, test, or
12 screening was conducted; and

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

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

20 (22) Radiological evidence of diffuse bilateral pleural thickening
21 means a quality 1 or 2 chest X-ray under the ILO system showing diffuse
22 bilateral pleural thickening of at least b2 on the ILO system and
23 blunting of at least one costophrenic angle as classified by a certified
24 B Reader;

25 (23) Spirometry means a test of air capacity of the lung through a
26 spirometer to measure the volume of air inspired and expired;

27 (24) Supporting test results means a report by a certified B Reader,
28 X-ray examinations, diagnostic imaging of the chest, pathology reports,
29 pulmonary function tests, and any other tests reviewed by the diagnosing
30 physician or a qualified physician in reaching the physician's
31 conclusions;

1 (25) Timed gas dilution means a method for measuring total lung
2 capacity in which the subject breathes into a spirometer containing a
3 known concentration of an inert and insoluble gas for a specific time,
4 and the concentration of that inert and insoluble gas in the lung is
5 compared to the concentration of that type of gas in the spirometer; and

6 (26) Total lung capacity means the volume of gas contained in the
7 lungs at the end of a maximal inspiration.

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

13 (a) The name, address, date of birth, marital status, occupation,
14 smoking history, current and past worksites, and current and past
15 employers of the exposed person and any person through whom the exposed
16 person alleges exposure to asbestos;

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

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

22 (d) The sites and location at the sites that establish the direct
23 connection between the exposed person, or the other person if exposure
24 was through another person, and each defendant;

25 (e) The beginning and ending dates of each exposure, the manner of
26 each exposure, the frequency and length of each exposure, and the
27 proximity of the asbestos-containing product or its use to the exposed
28 person and each person through whom the exposed person alleges exposure
29 to asbestos;

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

31 (g) Any supporting documentation relating to the information

1 required under this section.

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

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

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

13 **Sec. 11.** (1) In addition to the affidavit required by section 10 of
14 this act, within thirty days after filing an asbestos action, the
15 claimant shall file and provide all parties with a detailed narrative
16 medical report signed by a qualified physician and accompanied by
17 supporting test results constituting prima facie evidence the exposed
18 person has a physical impairment for which exposure to asbestos was a
19 substantial contributing factor.

20 (2) A defendant shall have a reasonable opportunity to challenge the
21 adequacy of the prima facie evidence. The court shall dismiss the
22 asbestos action without prejudice if the claimant fails to comply with
23 the requirements of the Asbestos Claims Priorities and Over-Naming Reform
24 Act or fails to make the prima facie showing required by the act.

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

29 (1) Radiological or pathological evidence of asbestosis or
30 radiological evidence of diffuse bilateral pleural thickening or a high-
31 resolution computed tomography scan showing evidence of asbestosis or

1 diffuse pleural thickening;

2 (2) A detailed occupational and exposure history from the exposed
3 person or, if that person is deceased, from the person most knowledgeable
4 about the exposures that form the basis of the action, including the
5 exposed person's places of employment and exposures to airborne
6 contaminants and whether each place of employment involved exposures to
7 airborne contaminants, including asbestos fibers or other disease-causing
8 dusts, that may cause pulmonary impairment, and the nature, duration, and
9 level of any exposure;

10 (3) A detailed medical, social, and smoking history from the exposed
11 person or, if that person is deceased, from the person most
12 knowledgeable, including a thorough review of the past and present
13 medical problems of the exposed person;

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

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

20 (6) Evidence that asbestosis or diffuse bilateral pleural
21 thickening, rather than chronic obstructive pulmonary disease, is a
22 substantial contributing factor to the exposed person's physical
23 impairment, based on a determination the exposed person has any of the
24 following:

25 (a) FVC below the predicted lower limit of normal and FEV1/FVC ratio
26 (using actual values) equal to or above the predicted lower limit of
27 normal;

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

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

1 system; and

2 (7) A statement from the qualified physician that exposure to
3 asbestos was a substantial contributing factor to the exposed person's
4 physical impairment and that such physical impairment was likely not the
5 result of other causes. A statement from the qualified physician that the
6 exposed person's physical impairment is "consistent with exposure to
7 asbestos" or "compatible with exposure to asbestos", or words to that
8 effect, shall not satisfy this section.

9 **Sec. 13.** (1) To make the prima facie showing required by section 11
10 of this act in an asbestos action related to an alleged asbestos-related
11 malignant condition, the detailed narrative medical report signed by a
12 qualified physician with supporting test results shall include the
13 following:

14 (a) A diagnosis that the exposed person has a malignant asbestos-
15 related condition; and

16 (b) A statement from the qualified physician that exposure to
17 asbestos was a substantial contributing factor to the exposed person's
18 malignant condition and not the result of other causes, and a detailed
19 explanation for that opinion. A statement from the qualified physician
20 that the malignant condition is "consistent with exposure to asbestos" or
21 "compatible with exposure to asbestos", or words to that effect, shall
22 not satisfy this section.

23 (2) The court shall hold an evidentiary hearing and determine if the
24 exposed person has established a prima facie showing of a malignant
25 condition for which exposure to asbestos was a substantial contributing
26 factor.

27 **Sec. 14.** (1) Evidence relating to the prima facie showings required
28 under the Asbestos Claims Priorities and Over-Naming Reform Act does not
29 create a presumption the exposed person has an asbestos-related
30 impairment and is not conclusive as to the liability of any defendant.

31 (2) Evidence shall not be offered at trial and the jury shall not be

1 informed of:

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

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

6 (3) Evidence relating to physical impairment offered in an asbestos
7 action:

8 (a) Must comply with the quality controls, equipment requirements,
9 methods of calibration, and techniques set forth in the AMA Guides and
10 official technical statements of the American Thoracic Society;

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

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

17 **Sec. 15.** Until a court enters an order determining that the exposed
18 person has established prima facie evidence of impairment, an asbestos
19 action is not subject to discovery, except discovery related to
20 establishing or challenging the prima facie evidence.

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

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

28 **Sec. 18.** Section 25-224, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 25-224 (1) All product liability actions, except one governed by
31 subsection (5) of this section, shall be commenced within four years next

1 after the date on which the death, injury, or damage complained of
2 occurs.

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

7 (i) For products manufactured in Nebraska, within ten years after
8 the date the product which allegedly caused the personal injury, death,
9 or damage was first sold or leased for use or consumption; or

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

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

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

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

30 (5)(a) ~~(5)~~ Any action to recover damages based on injury allegedly
31 resulting from exposure to asbestos composed of chrysotile, amosite,

1 crocidolite, tremolite, anthrophyllite, actinolite, or any combination
2 thereof, shall be commenced within four years after the injured person
3 has been informed of discovery of the injury by competent medical
4 authority and that such injury was caused by exposure to asbestos as
5 described herein, or within four years after the discovery of facts which
6 would reasonably lead to such discovery, whichever is earlier.

7 (b) No action commenced under this subsection based on the doctrine
8 of strict liability in tort shall be commenced or maintained against any
9 seller of a product which is alleged to contain or possess a defective
10 condition unreasonably dangerous to the buyer, user, or consumer unless
11 such seller is also the manufacturer of such product or the manufacturer
12 of the part thereof claimed to be defective.

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

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

24 **Sec. 19.** Original section 25-224, Reissue Revised Statutes of
25 Nebraska, is repealed.