

HOUSE BILL NO. 803

INTRODUCED BY G. OVERSTREET

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO ASBESTOS CLAIMS; ESTABLISHING THE ASBESTOS TRUST CLAIMS TRANSPARENCY ACT; ESTABLISHING DISCLOSURE REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR DISCOVERY OF ASBESTOS TRUSTS AND USE OF TRUST CLAIMS MATERIALS; PROVIDING FOR SETOFFS; ESTABLISHING THE ASBESTOS ACTION OVER-NAMING REFORM ACT; ESTABLISHING DISCLOSURE REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR DISCOVERY; PROVIDING FOR DISMISSAL WITHOUT PREJUDICE FOR NONCOMPLIANCE OR LACK OF EVIDENCE OF EXPOSURE; AND PROVIDING DEFINITIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Asbestos Trust Claims Transparency Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Asbestos action" means a civil action arising out of, based on, or related to the health effects of exposure to asbestos and a derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person. An asbestos action as provided under [sections 1 through 6] ~~is intended to be a separate action from the asbestos claims court in Title 3, chapter 20~~ does not include an asbestos-related claim as defined in 3-20-101.

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

(3) "Asbestos trust claim" means a claim for compensation by an exposed person or the exposed person's representative against an asbestos trust.

(4) "Claimant" means a person bringing an asbestos action, including a personal representative if the asbestos action is brought by an estate, or a conservator or next friend if the asbestos action is brought on behalf of a minor or incapacitated person, as defined in sections 41-1-101 and 72-5-101.

(5) "Exposed person" means a person whose exposure to asbestos or to asbestos-containing products is the basis for an asbestos action.

(6) "Trust claim materials" means a final executed proof of claim and documents and information submitted to or received from an asbestos trust by a claimant or a claimant's representative, including claim forms and supplementary materials, proofs of claim, affidavits, depositions and trial testimony of the claimant and others knowledgeable about the claimant's exposure history, work history, exposure allegations, medical and health records, documents that reflect the status of a claim against an asbestos trust, and if the trust claim has settled, documents relating to the settlement of the trust claim.

(7) "Trust governance document" means a document that relates to trust claim eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization for an asbestos trust.

**NEW SECTION. Section 3. Required disclosures by claimant.** (1) Within 30 days after an asbestos action is filed, the claimant shall do all of the following:

(a) provide the court and parties with a sworn statement signed by the claimant and claimant's counsel indicating that an investigation has been conducted and that all asbestos trust claims that can be made by the claimant have been completed and filed. The sworn statement shall indicate whether there has been a request to defer, delay, suspend, toll, withdraw, or otherwise alter the standing of an asbestos trust claim and provide the status and disposition of each asbestos trust claim. A deferral or placeholder claim that is missing necessary documentation for the trust to pay the claim does not meet the requirements of this section.

(b) provide all parties with all trust claim materials from all law firms connected to the claimant in relation to exposure to asbestos, including trust claim materials that relate to conditions other than those that are the basis for the asbestos action; and

1 (c) produce all available trust claims filed by an individual other than the claimant if the claimant's  
2 asbestos action is based on exposure to asbestos through that other individual and the materials are available  
3 to the claimant or claimant's counsel.

4 (2) A claimant shall supplement the statement and materials required to be provided pursuant to  
5 this section when the claimant files an additional asbestos trust claim, supplements an existing asbestos trust  
6 claim, or receives additional trust claim materials related to an asbestos trust claim made against an asbestos  
7 trust.

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9 **NEW SECTION. Section 4. Identification of asbestos trust claims by defendant.** (1) Not less than  
10 60 days before trial in an asbestos action, if a defendant believes the claimant has not filed all asbestos trust  
11 claims as required in [section 3], the defendant may move the court for an order to require the claimant to file  
12 additional trust claims specified by the defendant.

13 (2) If the court determines that there is a sufficient basis for the claimant to file an asbestos trust  
14 claim identified in the defendant's motion, the court shall order the claimant to file the asbestos trust claim and  
15 produce all related trust claim materials. An asbestos action may not proceed to trial until at least 90 days after  
16 the claimant complies with the court's order.

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18 **NEW SECTION. Section 5. Asbestos trust discovery -- use of materials.** (1) A defendant in an  
19 asbestos action may seek discovery against an asbestos trust. The claimant may not claim privilege or  
20 confidentiality to bar discovery. The claimant shall provide consent or any other expression of permission that  
21 may be required by the asbestos trust to release information and materials sought by the defendant.

22 (2) Trust claim materials and trust governance documents are presumed to be relevant and  
23 authentic and are admissible in evidence in an asbestos action. Claims of privilege may not apply to trust claim  
24 materials or trust governance documents.

25 (3) A claimant's submission of an asbestos trust claim and related trust claims materials may be  
26 considered by the trier of fact to determine liability and apportion fault in an asbestos action and is sufficient to  
27 support a finding that the claimant was exposed to products for which the trust was established to provide  
28 compensation and that the exposure was a substantial contributing factor in causing the claimant's injury that is

at issue in the asbestos action.

**NEW SECTION. Section 6. Setoff distribution.** In an asbestos action in which damages are awarded and setoffs are permitted under applicable law, a defendant is entitled to a setoff in the amount of the valuation established under the applicable trust governance documents, including payment percentages, for asbestos trust claims pending at trial and any amount the claimant has been awarded from an asbestos trust claim that has been identified at the time of trial. If multiple defendants are found liable for damages, the court shall distribute the amount of setoff proportionally between the defendants, according to the liability of each defendant.

**NEW SECTION. Section 7. Short title.** [Sections 7 through 10] may be cited as the "Asbestos Action Over-Naming Reform Act".

**NEW SECTION. Section 8. Definitions.** As used in [sections 7 through 10], unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Asbestos action" has the same meaning as provided in [section 2];
- (2) "Claimant" has the same meaning as provided in [section 2];
- (3) "Exposed person" has the same meaning as provided in [section 2].

**NEW SECTION. Section 9. Required disclosures by claimant.** (1) Within 30 days after an asbestos action is filed, the claimant shall file a sworn information form specifying the evidence that provides the basis for each claim against each defendant. The sworn information form shall include all of the following:

- (a) the name, date of birth, marital status, occupation, smoking history, current and past residences and worksites, and current and past employers of the exposed person, and any person through whom the exposed person was exposed to asbestos;
- (b) the name, address, and relationship to the exposed person for each person who is knowledgeable regarding the exposed person's exposures to asbestos;
- (c) the manufacturer or seller and brand and trade name of each asbestos-containing product to

1 which the exposed person was exposed or the other person was exposed if exposure was through another  
2 person;

3 (d) each site, including the address of the site, and specific location at each site where the  
4 exposed person was exposed or the other person was exposed if exposure was through another person;

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

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

9 (g) the name and address of all medical providers who diagnosed or treated the claimant's  
10 asbestos-related disease;

11 (h) a certification that no prior asbestos claims have been made on the claimant's behalf or, if the  
12 claimant has filed prior asbestos actions, information as to the case name, case number, and court; and

13 (i) a certification that all supporting documentation relating to the information required in this  
14 section has been provided to the parties.

15 (2) A claimant shall supplement the information required by this section when the claimant  
16 receives information that is required to be disclosed or becomes aware that a prior disclosure was inaccurate or  
17 incomplete.

18 (3) Discovery may not commence against a defendant in an asbestos action until the defendant's  
19 product or premises is identified in the disclosures required by this section.

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21 **NEW SECTION. Section 10. Dismissal without prejudice for noncompliance or lack of exposure**  
22 **evidence.** (1) The court, on a motion by a defendant, shall dismiss the asbestos action without prejudice as to  
23 any defendant whose product or premises is not identified in the disclosures required by [section 9].

24 (2) The court, on motion by a defendant, shall dismiss the asbestos action without prejudice as to  
25 the moving defendant or as to all defendants, as applicable, if the claimant fails to comply in whole or in part  
26 with [section 9].

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28 **NEW SECTION. Section 11. Codification instruction.** (1) [Sections 1 through 6] are intended to be

**Amendment - 2nd Reading/2nd House-tan - Requested by: (S) Committee of the Whole**

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

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1 codified as a new part in a new chapter in Title 27, and the provisions of Title 27 apply to [sections 1 through 6].

2 (2) [Sections 7 through 10] are intended to be codified as a new part in the same new chapter as

3 [sections 1 through 6] in Title 27, and the provisions of Title 27 apply to [sections 7 through 10].

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