

HOUSE BILL No. 4917

July 18, 2013, Introduced by Rep. Heise and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding chapter 30A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 30A

ASBESTOS LITIGATION DISCLOSURE

SEC. 3005. AS USED IN THIS CHAPTER:

(A) "ASBESTOS" MEANS CHRYSOTILE, AMOSITE, CROCIDOLITE,
TREMOLITE ASBESTOS, ANTHOPHYLLITE ASBESTOS, ACTINOLITE ASBESTOS,
AND ANY OF THESE MINERALS THAT HAVE BEEN CHEMICALLY TREATED OR
ALTERED.

(B) "ASBESTOS CLAIM" MEANS A CLAIM FOR DAMAGES, LOSS,
INDEMNIFICATION, CONTRIBUTION, OR OTHER RELIEF ARISING OUT OF,

1 BASED ON, OR IN ANY WAY RELATED TO ASBESTOS. ASBESTOS CLAIM
2 INCLUDES A CLAIM MADE BY OR ON BEHALF OF AN INDIVIDUAL WHO HAS BEEN
3 EXPOSED TO ASBESTOS, OR A REPRESENTATIVE, SPOUSE, PARENT, CHILD, OR
4 OTHER RELATIVE OF THE INDIVIDUAL, FOR INJURY, INCLUDING MENTAL OR
5 EMOTIONAL INJURY, DEATH, RISK OF DISEASE OR OTHER INJURY, COSTS OF
6 MEDICAL MONITORING OR SURVEILLANCE, OR ANY OTHER EFFECTS ON THE
7 INDIVIDUAL'S HEALTH THAT ARE CAUSED BY THE INDIVIDUAL'S EXPOSURE TO
8 ASBESTOS.

9 (C) "ASBESTOS TORT ACTION" MEANS A TORT ACTION BASED ON AN
10 ASBESTOS CLAIM.

11 (D) "ASBESTOS TRUST" MEANS A TRUST ENTITY, CLAIMS AGENT, OR
12 CLAIMS PROCESSING FACILITY THAT IS CREATED UNDER THE JURISDICTION
13 OF A UNITED STATES BANKRUPTCY COURT AND 11 USC 524(G), OR OTHER
14 APPLICABLE LAW, FORMED TO COMPENSATE CLAIMANTS WHO ASSERT ELIGIBLE
15 ASBESTOS CLAIMS, AND IN EXISTENCE ON OR BEFORE THE DATE THAT THE
16 SUBJECT ASBESTOS TORT ACTION IS INITIALLY SET FOR TRIAL.

17 (E) "ASBESTOS TRUST CLAIM" MEANS A CLAIM FOR COMPENSATION BY
18 AN EXPOSED PERSON OR THE EXPOSED PERSON'S REPRESENTATIVE AGAINST AN
19 ASBESTOS TRUST. IF A CLAIMANT FILES AN ASBESTOS TRUST CLAIM FOR
20 NONCANCER WITH, OR SUBMITS AN ASBESTOS TRUST CLAIM FOR NONCANCER
21 TO, AN ASBESTOS TRUST AND SUBSEQUENTLY FILES AN ASBESTOS TORT
22 ACTION BASED ON AN ASBESTOS CLAIM FOR CANCER, ASBESTOS TRUST CLAIM
23 MEANS BOTH THE EARLIER-FILED ASBESTOS TRUST CLAIM FOR NONCANCER AND
24 THE ASBESTOS CLAIM FOR CANCER THAT IS THE SUBJECT OF THE ASBESTOS
25 TORT ACTION.

26 (F) "CANCER" MEANS A MALIGNANT CONDITION.

27 (G) "CLAIMANT" MEANS A PERSON WHO ASSERTS AN ASBESTOS CLAIM OR

1 ASBESTOS TRUST CLAIM. CLAIMANT INCLUDES A PLAINTIFF,
2 COUNTERCLAIMANT, CROSS-CLAIMANT, OR THIRD-PARTY PLAINTIFF.

3 (H) "EXPOSED PERSON" MEANS AN INDIVIDUAL WHOSE EXPOSURE TO
4 ASBESTOS OR TO AN ASBESTOS-CONTAINING PRODUCT IS THE BASIS FOR AN
5 ASBESTOS CLAIM.

6 (I) "NONCANCER" MEANS A NONMALIGNANT CONDITION.

7 (J) "PROOF OF CLAIM" MEANS ANY FORM OF DOCUMENTATION THAT A
8 POTENTIAL CLAIMANT AGAINST AN ASBESTOS TRUST SUBMITS OR PROVIDES TO
9 THE ASBESTOS TRUST THAT ATTESTS TO OR ASSERTS THE EXISTENCE OF A
10 LIQUIDATED OR UNLIQUIDATED ASBESTOS CLAIM THAT THE CLAIMANT MAY
11 HAVE AGAINST THE ASBESTOS TRUST OR ITS PREDECESSORS UNDER ANY
12 THEORY OF LAW.

13 (K) "TORT ACTION" MEANS A CIVIL ACTION FOR DAMAGES FOR
14 PERSONAL INJURY OR DEATH. TORT ACTION INCLUDES A PRODUCT LIABILITY
15 ACTION. TORT ACTION DOES NOT INCLUDE A CIVIL ACTION FOR DAMAGES FOR
16 A BREACH OF CONTRACT OR ANOTHER AGREEMENT.

17 (L) "TRUST CLAIMS MATERIAL" MEANS A DOCUMENT THAT IS PART OF AN
18 ASBESTOS TRUST CLAIM, INCLUDING, BUT NOT LIMITED TO, A CLAIM FORM,
19 A PROOF OF CLAIM, AND INFORMATIONAL MATERIAL, REQUIRED BY AN
20 ASBESTOS TRUST TO BE SUBMITTED BY A CLAIMANT TO HAVE THE CLAIM
21 EVALUATED BY THE ASBESTOS TRUST AND RELIED UPON BY THE ASBESTOS
22 TRUST IN MAKING ITS COMPENSATION DETERMINATION.

23 SEC. 3007. (1) WITHIN 30 DAYS AFTER THE COMMENCEMENT OF
24 DISCOVERY IN AN ASBESTOS TORT ACTION THAT IS NOT OTHERWISE BARRED
25 OR DEFERRED UNDER APPLICABLE LAW OR, IF THE ASBESTOS TORT ACTION IS
26 PENDING ON AND DISCOVERY HAS COMMENCED IN THE ACTION BEFORE THE
27 EFFECTIVE DATE OF THIS CHAPTER, WITHIN 30 DAYS AFTER THE EFFECTIVE

1 DATE OF THIS CHAPTER, A CLAIMANT SHALL PROVIDE TO ALL OF THE
2 PARTIES IN THE ACTION A SWORN STATEMENT BY THE CLAIMANT, UNDER
3 PENALTY OF PERJURY, IDENTIFYING ALL ASBESTOS TRUST CLAIMS MADE BY
4 OR ON BEHALF OF THE CLAIMANT AND ALL TRUST CLAIMS MATERIAL
5 PERTAINING TO EACH IDENTIFIED ASBESTOS TRUST CLAIM. FOR EACH
6 ASBESTOS TRUST CLAIM DISCLOSED, THE SWORN STATEMENT SHALL DISCLOSE
7 THE IDENTITY OF THE ASBESTOS TRUST AGAINST WHICH THE CLAIM WAS
8 MADE, THE DATE ON WHICH THE CLAIM WAS MADE, AND WHETHER ANY REQUEST
9 FOR A DEFERRAL, DELAY, SUSPENSION, OR TOLLING OF THE ASBESTOS TRUST
10 CLAIMS PROCESS HAS BEEN SUBMITTED.

11 (2) A CLAIMANT SHALL SUBMIT A SWORN STATEMENT UNDER SUBSECTION
12 (1) IN ADDITION TO ANY OTHER DISCLOSURE REQUIREMENTS IMPOSED BY
13 LAW, COURT RULE OR ORDER, OR APPLICABLE AGREEMENT OR STIPULATION.

14 (3) IF A CLAIMANT, AFTER SUBMITTING A SWORN STATEMENT UNDER
15 SUBSECTION (1), MAKES AN ADDITIONAL ASBESTOS TRUST CLAIM THAT WAS
16 NOT PREVIOUSLY DISCLOSED, THE CLAIMANT SHALL PROVIDE TO ALL OF THE
17 PARTIES IN THE ASBESTOS TORT ACTION AN AMENDMENT UPDATING THE SWORN
18 STATEMENT AND PROVIDING IDENTIFYING INFORMATION DESCRIBED IN
19 SUBSECTION (1) FOR THE ADDITIONAL ASBESTOS TRUST CLAIM. THE
20 CLAIMANT SHALL PROVIDE AN AMENDMENT UNDER THIS SUBSECTION WITHIN 30
21 DAYS AFTER FILING THE ADDITIONAL ASBESTOS TRUST CLAIM WITH, OR
22 SUBMITTING THE ADDITIONAL ASBESTOS TRUST CLAIM TO, AN ASBESTOS
23 TRUST.

24 (4) WITH RESPECT TO AN ADDITIONAL ASBESTOS TRUST CLAIM
25 DISCLOSED UNDER SUBSECTION (3), THE CLAIMANT SHALL PROVIDE TO ALL
26 OF THE PARTIES IN THE ASBESTOS TORT ACTION ALL TRUST CLAIMS
27 MATERIAL PERTAINING TO THE ADDITIONAL ASBESTOS TRUST CLAIM. THE

1 CLAIMANT SHALL PROVIDE THE TRUST CLAIMS MATERIAL WITHIN 30 DAYS
2 AFTER FILING OR SUBMITTING THE ADDITIONAL ASBESTOS TRUST CLAIM.

3 (5) IF A CLAIMANT FAILS TO PROVIDE TO ALL OF THE PARTIES IN AN
4 ASBESTOS TORT ACTION ALL TRUST CLAIMS MATERIAL AS REQUIRED BY THIS
5 SECTION IN A TIMELY MANNER, THE COURT MAY DECLINE TO SET AN INITIAL
6 TRIAL DATE FOR THE ACTION OR DECLINE TO EXTEND THE DATE SET FOR
7 TRIAL OF THE ACTION.

8 (6) THIS SECTION DOES NOT PREVENT THE COURT IN AN ASBESTOS
9 TORT ACTION FROM REQUIRING DISCLOSURES IN ADDITION TO THE
10 DISCLOSURES REQUIRED UNDER THIS SECTION.

11 SEC. 3009. (1) NOT LATER THAN 75 DAYS BEFORE THE COMMENCEMENT
12 OF TRIAL OF AN ASBESTOS TORT ACTION, A DEFENDANT MAY FILE A MOTION
13 WITH THE COURT, WITH NOTICE TO THE CLAIMANT AND TO ALL OF THE
14 PARTIES IN THE ACTION, FOR AN ORDER TO STAY THE PROCEEDINGS. A
15 MOTION UNDER THIS SUBSECTION MUST SET FORTH CREDIBLE EVIDENCE THAT
16 DEMONSTRATES ALL OF THE FOLLOWING:

17 (A) THE IDENTITIES OF ALL ASBESTOS TRUSTS NOT PREVIOUSLY
18 DISCLOSED BY THE CLAIMANT UNDER SECTION 3007 AGAINST WHICH THE
19 CLAIMANT HAS NOT MADE AN ASBESTOS TRUST CLAIM BUT AGAINST WHICH THE
20 DEFENDANT IN GOOD FAITH BELIEVES THE CLAIMANT MAY MAKE A SUCCESSFUL
21 ASBESTOS TRUST CLAIM.

22 (B) THE INFORMATION THAT THE DEFENDANT BELIEVES SUPPORTS THE
23 ADDITIONAL ASBESTOS TRUST CLAIMS DESCRIBED IN SUBDIVISION (A) .

24 (C) A DESCRIPTION OF THE INFORMATION SUFFICIENT TO MEET THE
25 ASBESTOS TRUST CLAIM REQUIREMENTS OF THE ASBESTOS TRUSTS DESCRIBED
26 IN SUBDIVISION (A) .

27 (2) NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY,

1 IF A CLAIMANT PRODUCES ADDITIONAL ASBESTOS EXPOSURE INFORMATION
2 THAT SUPPORTS MAKING AN ADDITIONAL ASBESTOS TRUST CLAIM, A
3 DEFENDANT MAY FILE A MOTION TO STAY THE PROCEEDINGS UNDER
4 SUBSECTION (1) WITHIN 7 DAYS AFTER RECEIVING THE ADDITIONAL
5 ASBESTOS EXPOSURE INFORMATION.

6 (3) WITHIN 14 DAYS AFTER A MOTION UNDER SUBSECTION (1) IS
7 FILED, THE CLAIMANT MAY DO 1 OR MORE OF THE FOLLOWING:

8 (A) FILE THE ASBESTOS TRUST CLAIMS WITH OR SUBMIT THE ASBESTOS
9 TRUST CLAIMS TO THE ASBESTOS TRUSTS IDENTIFIED IN THE MOTION.
10 SUBMISSION TO THE COURT AND TO ALL OF THE PARTIES IN THE ASBESTOS
11 TORT ACTION OF PROOF DEMONSTRATING THAT THE ASBESTOS TRUST CLAIMS
12 HAVE BEEN FILED WITH OR SUBMITTED TO THE APPROPRIATE ASBESTOS
13 TRUSTS IS DISPOSITIVE OF THE MOTION. ALTERNATIVELY, THE DEFENDANT
14 MAY WITHDRAW THE MOTION.

15 (B) FILE WITH THE COURT A RESPONSE TO THE MOTION REQUESTING
16 THE COURT TO DETERMINE THAT THE INFORMATION SUPPORTING THE ASBESTOS
17 TRUST CLAIMS IDENTIFIED IN THE MOTION SHOULD BE MODIFIED BEFORE AN
18 ASBESTOS TRUST CLAIM IS FILED OR SUBMITTED OR THAT THERE IS
19 INSUFFICIENT INFORMATION TO FILE OR SUBMIT THE ASBESTOS TRUST
20 CLAIMS IDENTIFIED IN THE MOTION.

21 (C) FILE WITH THE COURT A RESPONSE TO THE MOTION REQUESTING
22 THE COURT TO DETERMINE THAT THE CLAIMANT'S OR CLAIMANT'S ATTORNEY'S
23 FEES AND EXPENSES TO PREPARE THE ASBESTOS CLAIM FORM AND FILE OR
24 SUBMIT THE ASBESTOS TRUST CLAIM IDENTIFIED IN THE MOTION EXCEED THE
25 CLAIMANT'S REASONABLY ANTICIPATED RECOVERY FROM THE ASBESTOS TRUST
26 CLAIM.

27 (4) A FILING OR SUBMISSION BY THE CLAIMANT UNDER SUBSECTION

1 (3) DOES NOT WAIVE ANY APPLICABLE ATTORNEY-CLIENT PRIVILEGE OR WORK
2 PRODUCT PRIVILEGE.

3 (5) A DEFENDANT THAT FILES A MOTION UNDER THIS SECTION HAS THE
4 BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT A
5 SUCCESSFUL ASBESTOS TRUST CLAIM COULD BE MADE IN GOOD-FAITH TO AN
6 ASBESTOS TRUST IDENTIFIED IN THE MOTION. SUBJECT TO SUBSECTIONS (6)
7 AND (7), IF THE COURT DETERMINES THAT THERE IS A GOOD-FAITH BASIS
8 FOR MAKING AN ASBESTOS TRUST CLAIM WITH AN ASBESTOS TRUST
9 IDENTIFIED IN THE MOTION, THE COURT SHALL STAY THE PROCEEDINGS
10 UNTIL THE CLAIMANT FILES THE ASBESTOS TRUST CLAIMS WITH OR SUBMITS
11 THE ASBESTOS TRUST CLAIMS TO THE ASBESTOS TRUSTS IDENTIFIED IN THE
12 MOTION AND OTHERWISE COMPLIES WITH THIS SECTION AND SECTION 3007.

13 (6) IF A CLAIMANT FILES A RESPONSE UNDER SUBSECTION (3) (B),
14 THE CLAIMANT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE
15 EVIDENCE THAT THE INFORMATION SET FORTH IN THE MOTION SHOULD BE
16 MODIFIED BEFORE AN ASBESTOS TRUST CLAIM IS FILED OR SUBMITTED OR
17 THAT THE ASBESTOS TRUST CLAIM SHOULD NOT BE FILED OR SUBMITTED
18 BECAUSE A SUCCESSFUL ASBESTOS TRUST CLAIM CANNOT BE MADE IN GOOD
19 FAITH.

20 (7) IF A CLAIMANT FILES A RESPONSE UNDER SUBSECTION (3) (C),
21 THE COURT SHALL DETERMINE IF THE FEES AND EXPENSES TO PREPARE AND
22 FILE OR SUBMIT THE ASBESTOS TRUST CLAIM IDENTIFIED IN THE MOTION
23 EXCEED THE CLAIMANT'S REASONABLY ANTICIPATED RECOVERY FROM THE
24 ASBESTOS TRUST CLAIM. IF THE COURT DETERMINES THAT THE FEES AND
25 EXPENSES EXCEED THE REASONABLY ANTICIPATED RECOVERY, THE COURT
26 SHALL REQUIRE THE CLAIMANT TO FILE WITH THE COURT A VERIFIED
27 STATEMENT OF THE CLAIMANT'S EXPOSURE HISTORY TO THE ASBESTOS

1 PRODUCTS COVERED BY THE ASBESTOS TRUST WITH WHICH OR TO WHICH THE
2 ASBESTOS TRUST CLAIM COULD HAVE BEEN FILED OR SUBMITTED.

3 SEC. 3011. (1) AN ASBESTOS TRUST CLAIM FOR NONCANCER AND AN
4 ASBESTOS TRUST CLAIM FOR CANCER ARE BASED ON DISTINCT INJURIES
5 CAUSED BY AN INDIVIDUAL'S EXPOSURE TO ASBESTOS.

6 (2) ASBESTOS TRUST CLAIMS AND THE INFORMATION THAT IS THE
7 SUBJECT OF DISCLOSURE UNDER SECTION 3007 OR 3009 ARE PRESUMED TO BE
8 RELEVANT TO AND DISCOVERABLE IN AN ASBESTOS TORT ACTION.
9 NOTWITHSTANDING ANY AGREEMENT OR CONFIDENTIALITY PROVISION, TRUST
10 CLAIMS MATERIAL ARE PRESUMED TO NOT BE PRIVILEGED. THE PARTIES IN
11 THE ASBESTOS TORT ACTION MAY INTRODUCE AT TRIAL ANY TRUST CLAIMS
12 MATERIAL TO PROVE ALTERNATIVE CAUSATION FOR THE EXPOSED PERSON'S
13 CLAIMED INJURY OR DEATH, TO PROVE A BASIS TO ALLOCATE
14 RESPONSIBILITY FOR THE CLAIMANT'S CLAIMED INJURY OR DEATH, OR TO
15 PROVE OTHER ISSUES RELEVANT TO AN ADJUDICATION OF THE ASBESTOS
16 CLAIM, UNLESS THE EXCLUSION OF THE TRUST CLAIMS MATERIAL IS
17 OTHERWISE REQUIRED BY THE RULES OF EVIDENCE.

18 (3) IN ADDITION TO THE DISCLOSURE REQUIREMENTS OF SECTIONS
19 3007 AND 3009, THE PARTIES TO AN ASBESTOS TORT ACTION MAY SEEK
20 ADDITIONAL DISCLOSURE AND DISCOVERY OF INFORMATION RELEVANT TO THE
21 ACTION BY ANY MECHANISM PROVIDED BY ANY APPLICABLE STATUTE OR COURT
22 RULE OR ORDER. IN ADDITION TO THE DISCLOSURE DESCRIBED IN THIS
23 SUBSECTION, A DEFENDANT IN THE ASBESTOS TORT ACTION ALSO MAY SEEK
24 DISCOVERY OF THE CLAIMANT'S ASBESTOS TRUST CLAIMS DIRECTLY FROM THE
25 ASBESTOS TRUSTS INVOLVED.

26 (4) IF A DEFENDANT OR JUDGMENT DEBTOR IN AN ASBESTOS TORT
27 ACTION FILES AN APPROPRIATE MOTION SEEKING A SANCTION OR OTHER

1 RELIEF, THE COURT MAY IMPOSE A SANCTION OR OTHER RELIEF ALLOWED
2 UNDER STATUTE OR COURT RULE, INCLUDING, BUT NOT LIMITED TO,
3 VACATING A JUDGMENT RENDERED IN THE ASBESTOS TORT ACTION FOR A
4 CLAIMANT'S FAILURE TO COMPLY WITH THE DISCLOSURE REQUIREMENTS OF
5 THIS SECTION AND SECTIONS 3007 AND 3009.

6 (5) IF, AFTER OBTAINING A JUDGMENT IN AN ASBESTOS TORT ACTION
7 IN THIS STATE, A CLAIMANT FILES AN ADDITIONAL ASBESTOS TRUST CLAIM
8 WITH, OR SUBMITS AN ADDITIONAL ASBESTOS TRUST CLAIM TO, AN ASBESTOS
9 TRUST THAT WAS IN EXISTENCE AT THE TIME THE CLAIMANT OBTAINED THE
10 JUDGMENT, AND IF A DEFENDANT OR JUDGMENT DEBTOR IN THE ACTION FILES
11 AN APPROPRIATE MOTION SEEKING SANCTIONS OR OTHER RELIEF, THE COURT
12 MAY REOPEN THE JUDGMENT AND DO 1 OR BOTH OF THE FOLLOWING:

13 (A) ADJUST THE JUDGMENT BY THE AMOUNT OF ANY SUBSEQUENT
14 ASBESTOS TRUST PAYMENTS OBTAINED BY THE CLAIMANT.

15 (B) ORDER ANY OTHER RELIEF TO THE PARTIES THAT THE COURT
16 CONSIDERS TO BE JUST AND PROPER.

17 (6) A DEFENDANT OR JUDGMENT DEBTOR SHALL FILE A MOTION UNDER
18 THIS SECTION WITHIN A REASONABLE TIME AND WITHIN 1 YEAR AFTER THE
19 JUDGMENT WAS ENTERED.