

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5456

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:

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CHAPTER 30A

ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT

SEC. 3010. THIS CHAPTER MAY BE REFERRED TO AND CITED AS THE
"ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT".

SEC. 3011. AS USED IN THIS CHAPTER:

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

1 (B) "ASBESTOS ACTION" MEANS A CLAIM FOR DAMAGES OR OTHER CIVIL
2 OR EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION THAT ARISES OUT OF,
3 IS BASED ON, OR IS RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO
4 ASBESTOS, AND ANY OTHER DERIVATIVE CLAIM MADE BY OR ON BEHALF OF AN
5 INDIVIDUAL EXPOSED TO ASBESTOS OR A REPRESENTATIVE, SPOUSE, PARENT,
6 CHILD, OR OTHER RELATIVE OF THE INDIVIDUAL.

7 (C) "ASBESTOS TRUST" MEANS A GOVERNMENT-APPROVED OR COURT-
8 APPROVED TRUST, QUALIFIED SETTLEMENT FUND, COMPENSATION FUND, OR
9 CLAIMS FACILITY THAT IS CREATED AS A RESULT OF AN ADMINISTRATIVE OR
10 LEGAL ACTION, A COURT-APPROVED BANKRUPTCY, OR UNDER 11 USC 524(G),
11 11 USC 1121(A), OR ANOTHER APPLICABLE PROVISION OF LAW AND THAT IS
12 INTENDED TO PROVIDE COMPENSATION TO CLAIMANTS ARISING OUT OF, BASED
13 ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS.

14 (D) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
15 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

16 (E) "PLAINTIFF" MEANS THE PERSON BRINGING THE ASBESTOS ACTION,
17 INCLUDING A PERSONAL REPRESENTATIVE IF THE ASBESTOS ACTION IS
18 BROUGHT BY AN ESTATE, OR A CONSERVATOR OR NEXT FRIEND IF THE
19 ASBESTOS ACTION IS BROUGHT ON BEHALF OF A MINOR OR LEGALLY
20 INCAPACITATED INDIVIDUAL.

21 (F) "TRUST CLAIMS MATERIALS" MEANS A FINAL EXECUTED PROOF OF
22 CLAIM AND ALL OTHER DOCUMENTS AND INFORMATION RELATED TO A CLAIM
23 AGAINST AN ASBESTOS TRUST, INCLUDING CLAIMS FORMS AND SUPPLEMENTARY
24 MATERIALS, AFFIDAVITS, DEPOSITIONS AND TRIAL TESTIMONY, WORK
25 HISTORY, AND MEDICAL AND HEALTH RECORDS, ALL DOCUMENTS THAT REFLECT
26 THE STATUS OF A CLAIM AGAINST AN ASBESTOS TRUST, AND, IF THE TRUST
27 CLAIM HAS SETTLED, ALL DOCUMENTS THAT RELATE TO THE SETTLEMENT OF

1 THE TRUST CLAIM.

2 (G) "TRUST GOVERNANCE DOCUMENTS" MEANS ALL DOCUMENTS THAT
3 RELATE TO ELIGIBILITY AND PAYMENT LEVELS, INCLUDING CLAIMS PAYMENT
4 MATRICES, TRUST DISTRIBUTION PROCEDURES, AND PLANS FOR
5 REORGANIZATION, FOR AN ASBESTOS TRUST.

6 SEC. 3012. (1) NOT LATER THAN 180 DAYS BEFORE THE INITIAL DATE
7 SET FOR THE TRIAL OF AN ASBESTOS ACTION, THE PLAINTIFF SHALL DO ALL
8 OF THE FOLLOWING:

9 (A) PROVIDE THE COURT AND PARTIES WITH A SWORN STATEMENT
10 SIGNED BY THE PLAINTIFF AND PLAINTIFF'S COUNSEL INDICATING THAT AN
11 INVESTIGATION HAS BEEN CONDUCTED AND THAT, BASED ON INFORMATION
12 REASONABLY AVAILABLE TO THE PLAINTIFF AND PLAINTIFF'S COUNSEL, ALL
13 ASBESTOS TRUST CLAIMS THAT CAN BE MADE BY THE PLAINTIFF OR ANY
14 PERSON ON THE PLAINTIFF'S BEHALF HAVE BEEN COMPLETED AND FILED. IF
15 THE PLAINTIFF OR PLAINTIFF'S COUNSEL LATER BECOMES AWARE THAT
16 ADDITIONAL TRUST CLAIMS CAN BE FILED, THE SWORN STATEMENT MUST BE
17 SUPPLEMENTED UNDER SUBSECTION (2). A DEFERRAL OR PLACEHOLDER CLAIM
18 THAT IS MISSING NECESSARY DOCUMENTATION FOR THE ASBESTOS TRUST TO
19 REVIEW AND PAY THE CLAIM DOES NOT MEET THE REQUIREMENTS OF THIS
20 SUBDIVISION. THE SWORN STATEMENT MUST INDICATE WHETHER THERE HAS
21 BEEN A REQUEST TO DEFER, DELAY, SUSPEND, OR TOLL, WITHDRAW, OR
22 OTHERWISE ALTER THE STANDING OF ANY ASBESTOS TRUST CLAIM, AND
23 PROVIDE THE STATUS AND DISPOSITION OF EACH ASBESTOS TRUST CLAIM.

24 (B) PROVIDE ALL PARTIES WITH ALL TRUST CLAIMS MATERIALS,
25 INCLUDING TRUST CLAIMS MATERIALS THAT RELATE TO CONDITIONS OTHER
26 THAN THOSE THAT ARE THE BASIS FOR THE ASBESTOS ACTION AND INCLUDING
27 ALL TRUST CLAIMS MATERIALS FROM ALL LAW FIRMS CONNECTED TO THE

1 PLAINTIFF IN RELATION TO EXPOSURE TO ASBESTOS, INCLUDING ANYONE AT
2 A LAW FIRM INVOLVED IN THE ASBESTOS ACTION, ANY REFERRING LAW FIRM,
3 AND ANY OTHER LAW FIRM THAT HAS FILED AN ASBESTOS TRUST CLAIM FOR
4 THE PLAINTIFF OR ON THE PLAINTIFF'S BEHALF. DOCUMENTS PROVIDED
5 UNDER THIS SUBDIVISION MUST BE ACCOMPANIED BY AN AFFIDAVIT
6 CERTIFYING THAT THE TRUST CLAIMS MATERIALS SUBMITTED ARE TRUE AND
7 COMPLETE.

8 (C) IF THE PLAINTIFF'S ASBESTOS TRUST CLAIM IS BASED ON
9 EXPOSURE TO ASBESTOS THROUGH ANOTHER INDIVIDUAL, PRODUCE ALL TRUST
10 CLAIMS MATERIALS SUBMITTED BY THE OTHER INDIVIDUAL TO ANY ASBESTOS
11 TRUST IF THE MATERIALS ARE AVAILABLE TO THE PLAINTIFF OR
12 PLAINTIFF'S COUNSEL.

13 (2) A PLAINTIFF HAS A CONTINUING DUTY TO SUPPLEMENT THE
14 INFORMATION AND MATERIALS REQUIRED TO BE PROVIDED UNDER SUBSECTION
15 (1), AND SHALL DO SO WITHIN 30 DAYS AFTER THE PLAINTIFF OR A PERSON
16 ON THE PLAINTIFF'S BEHALF SUPPLEMENTS AN EXISTING ASBESTOS TRUST
17 CLAIM, RECEIVES ADDITIONAL INFORMATION OR MATERIALS RELATED TO AN
18 ASBESTOS TRUST CLAIM, OR FILES AN ADDITIONAL ASBESTOS TRUST CLAIM.

19 (3) THE COURT MAY DISMISS THE ASBESTOS ACTION IF THE PLAINTIFF
20 FAILS TO COMPLY WITH THIS SECTION.

21 SEC. 3013. (1) NOT LESS THAN 60 DAYS BEFORE TRIAL, THE
22 DEFENDANT SHALL CONFER WITH THE PLAINTIFF IF THE DEFENDANT BELIEVES
23 THE PLAINTIFF HAS NOT FILED ALL ASBESTOS TRUST CLAIMS AS REQUIRED
24 UNDER SECTION 3012. AFTER CONFERRING WITH THE PLAINTIFF UNDER THIS
25 SUBSECTION, THE DEFENDANT MAY MOVE THE COURT FOR AN ORDER TO
26 REQUIRE THE PLAINTIFF TO FILE ADDITIONAL TRUST CLAIMS. THE MOTION
27 MUST IDENTIFY THE ASBESTOS TRUST CLAIMS THAT THE DEFENDANT BELIEVES

1 THE PLAINTIFF CAN FILE. THE DEFENDANT SHALL PRODUCE OR DESCRIBE THE
2 INFORMATION IT POSSESSES OR IS AWARE OF IN SUPPORT OF THE MOTION.
3 IF THE DEFENDANT HAS PREVIOUSLY FILED A MOTION UNDER THIS SECTION,
4 THE COURT SHALL NOT GRANT A SUBSEQUENT MOTION IF THE DEFENDANT KNEW
5 THAT THE PLAINTIFF MET THE CRITERIA FOR PAYMENT FOR THE ADDITIONAL
6 TRUST CLAIM IDENTIFIED IN THE SUBSEQUENT MOTION AT THE TIME THE
7 EARLIER MOTION WAS FILED.

8 (2) WITHIN 10 DAYS AFTER RECEIVING A MOTION UNDER SUBSECTION
9 (1), THE PLAINTIFF SHALL DO 1 OF THE FOLLOWING:

10 (A) FILE THE ASBESTOS TRUST CLAIMS.

11 (B) FILE A WRITTEN RESPONSE WITH THE COURT STATING WHY THERE
12 IS INSUFFICIENT EVIDENCE FOR THE PLAINTIFF TO FILE THE ASBESTOS
13 TRUST CLAIMS.

14 (C) FILE A WRITTEN RESPONSE WITH THE COURT REQUESTING A
15 DETERMINATION THAT THE COST TO FILE THE ASBESTOS TRUST CLAIMS
16 EXCEEDS THE PLAINTIFF'S REASONABLY ANTICIPATED RECOVERY.

17 (3) WITHIN 10 DAYS AFTER THE PLAINTIFF FILES A WRITTEN
18 RESPONSE TO THE DEFENDANT'S MOTION, THE COURT SHALL DETERMINE IF
19 THERE IS SUFFICIENT BASIS FOR THE PLAINTIFF TO FILE THE ASBESTOS
20 TRUST CLAIMS IDENTIFIED IN THE MOTION. IF THE COURT DETERMINES THAT
21 THERE IS A SUFFICIENT BASIS FOR THE PLAINTIFF TO FILE THE ASBESTOS
22 TRUST CLAIM THAT IS THE SUBJECT OF A MOTION UNDER SUBSECTION (1),
23 THE COURT SHALL STAY THE ASBESTOS ACTION UNTIL THE PLAINTIFF FILES
24 THE ASBESTOS TRUST CLAIM AND PRODUCES ALL RELATED TRUST CLAIMS
25 MATERIALS.

26 (4) IF THE COURT DETERMINES THAT THE COST OF SUBMITTING AN
27 ASBESTOS TRUST CLAIM THAT IS THE SUBJECT OF A MOTION UNDER

1 SUBSECTION (1) EXCEEDS THE PLAINTIFF'S REASONABLY ANTICIPATED
2 RECOVERY, THE COURT SHALL STAY THE ASBESTOS ACTION UNTIL THE
3 PLAINTIFF FILES WITH THE COURT AND PROVIDES ALL PARTIES WITH A
4 VERIFIED STATEMENT OF THE PLAINTIFF'S HISTORY OF EXPOSURE TO, USAGE
5 OF, OR OTHER CONNECTION TO ASBESTOS COVERED BY THE ASBESTOS TRUST.

6 (5) THE COURT SHALL NOT SCHEDULE THE ASBESTOS ACTION FOR TRIAL
7 SOONER THAN 60 DAYS AFTER THE PLAINTIFF COMPLIES WITH THIS SECTION.

8 SEC. 3014. (1) TRUST CLAIMS MATERIALS AND TRUST GOVERNANCE
9 DOCUMENTS ARE PRESUMED TO BE RELEVANT AND AUTHENTIC, AND ARE
10 ADMISSIBLE IN EVIDENCE IN AN ASBESTOS ACTION. A CLAIM OF PRIVILEGE
11 DOES NOT APPLY TO TRUST CLAIMS MATERIALS OR TRUST GOVERNANCE
12 DOCUMENTS.

13 (2) A DEFENDANT IN AN ASBESTOS ACTION MAY SEEK DISCOVERY FROM
14 AN ASBESTOS TRUST. THE PLAINTIFF MAY NOT CLAIM PRIVILEGE OR
15 CONFIDENTIALITY TO BAR DISCOVERY AND SHALL PROVIDE CONSENT AT THE
16 TIME OF ASBESTOS TRUST IDENTIFICATION, INCLUDING, BUT NOT LIMITED
17 TO, AUTHORIZATION FOR RELEASE OF TRUST MATERIALS OR OTHER
18 EXPRESSION OF PERMISSION THAT MAY BE REQUIRED BY THE ASBESTOS TRUST
19 TO RELEASE INFORMATION AND MATERIALS SOUGHT BY A DEFENDANT.

20 (3) TRUST MATERIALS MAY BE USED TO PROVE, WITHOUT LIMITATION,
21 AN ALTERNATIVE SOURCE FOR THE CAUSE OF THE PLAINTIFF'S ALLEGED HARM
22 AND MAY SERVE AS A BASIS TO ALLOCATE RESPONSIBILITY FOR THE
23 PLAINTIFF'S ALLEGED HARM.

24 SEC. 3015. (1) IF A PLAINTIFF OR PERSON ON THE PLAINTIFF'S
25 BEHALF FILES AN ADDITIONAL ASBESTOS TRUST CLAIM AFTER OBTAINING A
26 JUDGMENT IN AN ASBESTOS ACTION, AND IF THAT ASBESTOS TRUST WAS IN
27 EXISTENCE AT THE TIME THE PLAINTIFF OBTAINED THE JUDGMENT, THE

1 TRIAL COURT, ON A MOTION BY A DEFENDANT OR JUDGMENT DEBTOR SEEKING
2 SANCTIONS OR OTHER RELIEF, HAS JURISDICTION TO REOPEN AND ADJUST
3 THE JUDGMENT BY THE AMOUNT OF ANY SUBSEQUENT ASBESTOS TRUST
4 PAYMENTS OBTAINED BY THE PLAINTIFF AND ORDER ANY OTHER RELIEF THAT
5 THE COURT CONSIDERS PROPER.

6 (2) A DEFENDANT OR JUDGMENT DEBTOR SHALL FILE ANY MOTION UNDER
7 THIS SECTION WITHIN A REASONABLE TIME AND NOT MORE THAN 1 YEAR
8 AFTER THE JUDGMENT WAS ENTERED.

9 SEC. 3016. (1) THIS CHAPTER APPLIES TO ASBESTOS ACTIONS FILED
10 ON OR AFTER THE EFFECTIVE DATE OF THIS CHAPTER. THIS CHAPTER ALSO
11 APPLIES TO ANY PENDING ASBESTOS ACTIONS IN WHICH TRIAL HAS NOT
12 COMMENCED ON OR BEFORE THE EFFECTIVE DATE OF THIS CHAPTER. HOWEVER,
13 THIS CHAPTER DOES NOT APPLY TO A PENDING ASBESTOS ACTION IN WHICH
14 TRIAL HAS BEEN SCHEDULED TO OCCUR BEFORE NOVEMBER 1, 2018.

15 (2) IF THE APPLICATION OF THIS CHAPTER WOULD
16 UNCONSTITUTIONALLY AFFECT A VESTED RIGHT, THIS CHAPTER MUST ONLY BE
17 APPLIED PROSPECTIVELY.