

HOUSE BILL No. 5456

January 30, 2018, Introduced by Reps. Wentworth, Webber, Cole, Lower, Lucido, Lilly, Rendon, LaFave, Vaupel, Iden, Theis, Barrett, Glenn and Chatfield and referred to the Committee on Michigan Competitiveness.

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 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) WITHIN 30 DAYS AFTER AN ASBESTOS ACTION IS
7 FILED, OR WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THIS CHAPTER,
8 WHICHEVER IS LATER, THE PLAINTIFF SHALL DO ALL OF THE FOLLOWING:

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

21 (B) PROVIDE ALL PARTIES WITH ALL TRUST CLAIMS MATERIALS,
22 INCLUDING TRUST CLAIMS MATERIALS THAT RELATE TO CONDITIONS OTHER
23 THAN THOSE THAT ARE THE BASIS FOR THE ASBESTOS ACTION AND INCLUDING
24 ALL TRUST CLAIMS MATERIALS FROM ALL LAW FIRMS CONNECTED TO THE
25 PLAINTIFF IN RELATION TO EXPOSURE TO ASBESTOS, INCLUDING ANYONE AT
26 A LAW FIRM INVOLVED IN THE ASBESTOS ACTION, ANY REFERRING LAW FIRM,
27 AND ANY OTHER LAW FIRM THAT HAS FILED AN ASBESTOS TRUST CLAIM FOR

1 THE PLAINTIFF OR ON THE PLAINTIFF'S BEHALF. DOCUMENTS PROVIDED
2 UNDER THIS SUBDIVISION MUST BE ACCOMPANIED BY A CUSTODIAL AFFIDAVIT
3 FROM THE ASBESTOS TRUST CERTIFYING THAT THE TRUST CLAIMS MATERIALS
4 SUBMITTED ARE TRUE AND COMPLETE.

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

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

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

18 SEC. 3013. (1) A DEFENDANT IN AN ASBESTOS ACTION MAY FILE A
19 MOTION REQUESTING A STAY OF THE PROCEEDING ON OR BEFORE THE LATER
20 OF THE SIXTIETH DAY BEFORE TRIAL OF THE ACTION IS SET TO COMMENCE
21 OR ANY OTHER TIME THAT THE DEFENDANT HAS A GOOD-FAITH BASIS TO
22 REQUEST A STAY. THE MOTION MUST IDENTIFY THE ASBESTOS TRUST CLAIMS
23 NOT PREVIOUSLY IDENTIFIED THAT THE DEFENDANT BELIEVES THE PLAINTIFF
24 CAN FILE.

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

27 (A) FILE THE ASBESTOS TRUST CLAIMS.

1 (B) FILE A RESPONSE WITH THE COURT STATING WHY THERE IS
2 INSUFFICIENT EVIDENCE FOR THE PLAINTIFF TO FILE THE ASBESTOS TRUST
3 CLAIMS.

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

7 (3) IF THE COURT DETERMINES THAT THERE IS A SUFFICIENT BASIS
8 FOR THE PLAINTIFF TO FILE AN ASBESTOS TRUST CLAIM THAT IS THE
9 SUBJECT OF A MOTION UNDER SUBSECTION (1), THE COURT SHALL STAY THE
10 ASBESTOS ACTION UNTIL THE PLAINTIFF FILES THE ASBESTOS TRUST CLAIM
11 AND PRODUCES ALL RELATED TRUST CLAIMS MATERIALS.

12 (4) IF THE COURT DETERMINES THAT THE COST OF SUBMITTING AN
13 ASBESTOS TRUST CLAIM THAT IS THE SUBJECT OF A MOTION UNDER
14 SUBSECTION (1) EXCEEDS THE PLAINTIFF'S REASONABLY ANTICIPATED
15 RECOVERY, THE COURT SHALL STAY THE ASBESTOS ACTION UNTIL THE
16 PLAINTIFF FILES WITH THE COURT AND PROVIDES ALL PARTIES WITH A
17 VERIFIED STATEMENT OF THE PLAINTIFF'S HISTORY OF EXPOSURE TO, USAGE
18 OF, OR OTHER CONNECTION TO ASBESTOS COVERED BY THE ASBESTOS TRUST.

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

21 SEC. 3014. (1) TRUST CLAIMS MATERIALS AND TRUST GOVERNANCE
22 DOCUMENTS ARE PRESUMED TO BE RELEVANT AND AUTHENTIC, AND ARE
23 ADMISSIBLE IN EVIDENCE IN AN ASBESTOS ACTION. A CLAIM OF PRIVILEGE
24 DOES NOT APPLY TO TRUST CLAIMS MATERIALS OR TRUST GOVERNANCE
25 DOCUMENTS.

26 (2) A DEFENDANT IN AN ASBESTOS ACTION MAY SEEK DISCOVERY FROM
27 AN ASBESTOS TRUST. THE PLAINTIFF MAY NOT CLAIM PRIVILEGE OR

1 CONFIDENTIALITY TO BAR DISCOVERY AND SHALL PROVIDE CONSENT AT THE
2 TIME OF ASBESTOS TRUST IDENTIFICATION, INCLUDING, BUT NOT LIMITED
3 TO, AUTHORIZATION FOR RELEASE OF TRUST MATERIALS OR OTHER
4 EXPRESSION OF PERMISSION THAT MAY BE REQUIRED BY THE ASBESTOS TRUST
5 TO RELEASE INFORMATION AND MATERIALS SOUGHT BY A DEFENDANT.

6 (3) TRUST MATERIALS THAT ARE SUFFICIENT TO ENTITLE A CLAIM TO
7 CONSIDERATION FOR PAYMENT UNDER THE APPLICABLE TRUST GOVERNANCE
8 DOCUMENTS ARE SUFFICIENT TO SUPPORT A JURY FINDING THAT THE
9 PLAINTIFF WAS EXPOSED TO PRODUCTS FOR WHICH THE TRUST WAS
10 ESTABLISHED TO PROVIDE COMPENSATION AND THAT, UNDER APPLICABLE LAW,
11 THE EXPOSURE IS A SUBSTANTIAL CONTRIBUTING FACTOR IN CAUSING THE
12 PLAINTIFF'S INJURY.

13 SEC. 3015. (1) IF A PLAINTIFF OR PERSON ON THE PLAINTIFF'S
14 BEHALF FILES AN ADDITIONAL ASBESTOS TRUST CLAIM AFTER OBTAINING A
15 JUDGMENT IN AN ASBESTOS ACTION, AND IF THAT ASBESTOS TRUST WAS IN
16 EXISTENCE AT THE TIME THE PLAINTIFF OBTAINED THE JUDGMENT, THE
17 TRIAL COURT, ON A MOTION BY A DEFENDANT OR JUDGMENT DEBTOR SEEKING
18 SANCTIONS OR OTHER RELIEF, HAS JURISDICTION TO REOPEN AND ADJUST
19 THE JUDGMENT BY THE AMOUNT OF ANY SUBSEQUENT ASBESTOS TRUST
20 PAYMENTS OBTAINED BY THE PLAINTIFF AND ORDER ANY OTHER RELIEF THAT
21 THE COURT CONSIDERS PROPER.

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

25 SEC. 3016. (1) THIS CHAPTER APPLIES TO ASBESTOS ACTIONS FILED
26 ON OR AFTER THE EFFECTIVE DATE OF THIS CHAPTER. THIS CHAPTER ALSO
27 APPLIES TO ANY PENDING ASBESTOS ACTIONS IN WHICH TRIAL HAS NOT

1 COMMENCED ON OR BEFORE THE EFFECTIVE DATE OF THIS CHAPTER.
2 (2) IF THE APPLICATION OF THIS CHAPTER WOULD
3 UNCONSTITUTIONALLY AFFECT A VESTED RIGHT, THIS CHAPTER MUST ONLY BE
4 APPLIED PROSPECTIVELY.