

Act No. 100  
Public Acts of 2018  
Approved by the Governor  
April 2, 2018  
Filed with the Secretary of State  
April 2, 2018  
EFFECTIVE DATE: April 2, 2018

**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

**Introduced by Reps. Wentworth, Webber, Cole, Lower, Lucido, Lilly, Rendon, LaFave, Vaupel, Iden, Theis, Barrett, Glenn and Chatfield**

# **ENROLLED HOUSE BILL No. 5456**

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” (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.

(b) “Asbestos action” means a claim for damages or other civil or equitable relief presented in a civil action that arises out of, is based on, or is related to the health effects of exposure to asbestos, and any other derivative claim made by or on behalf of an individual exposed to asbestos or a representative, spouse, parent, child, or other relative of the individual.

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

(d) “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(e) “Plaintiff” means the person bringing the 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 legally incapacitated individual.

(f) “Trust claims materials” means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, and medical and health records, all documents that reflect the status of a claim against an asbestos trust, and, if the trust claim has settled, all documents that relate to the settlement of the trust claim.

(g) “Trust governance documents” means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, and plans for reorganization, for an asbestos trust.

Sec. 3012. (1) Not later than 180 days before the initial date set for the trial of an asbestos action, the plaintiff shall do all of the following:

(a) Provide the court and parties with a sworn statement signed by the plaintiff and plaintiff’s counsel indicating that an investigation has been conducted and that, based on information reasonably available to the plaintiff and plaintiff’s counsel, all asbestos trust claims that can be made by the plaintiff or any person on the plaintiff’s behalf have been completed and filed. If the plaintiff or plaintiff’s counsel later becomes aware that additional trust claims can be filed, the sworn statement must be supplemented under subsection (2). A deferral or placeholder claim that is missing necessary documentation for the asbestos trust to review and pay the claim does not meet the requirements of this subdivision. The sworn statement must indicate whether there has been a request to defer, delay, suspend, or toll, withdraw, or otherwise alter the standing of any asbestos trust claim, and provide the status and disposition of each asbestos trust claim.

(b) Provide all parties with all trust claims materials, including trust claims materials that relate to conditions other than those that are the basis for the asbestos action and including all trust claims materials from all law firms connected to the plaintiff in relation to exposure to asbestos, including anyone at a law firm involved in the asbestos action, any referring law firm, and any other law firm that has filed an asbestos trust claim for the plaintiff or on the plaintiff’s behalf. Documents provided under this subdivision must be accompanied by an affidavit certifying that the trust claims materials submitted are true and complete.

(c) If the plaintiff’s asbestos trust claim is based on exposure to asbestos through another individual, produce all trust claims materials submitted by the other individual to any asbestos trust if the materials are available to the plaintiff or plaintiff’s counsel.

(2) A plaintiff has a continuing duty to supplement the information and materials required to be provided under subsection (1), and shall do so within 30 days after the plaintiff or a person on the plaintiff’s behalf supplements an existing asbestos trust claim, receives additional information or materials related to an asbestos trust claim, or files an additional asbestos trust claim.

(3) The court may dismiss the asbestos action if the plaintiff fails to comply with this section.

Sec. 3013. (1) Not less than 60 days before trial, the defendant shall confer with the plaintiff if the defendant believes the plaintiff has not filed all asbestos trust claims as required under section 3012. After conferring with the plaintiff under this subsection, the defendant may move the court for an order to require the plaintiff to file additional trust claims. The motion must identify the asbestos trust claims that the defendant believes the plaintiff can file. The defendant shall produce or describe the information it possesses or is aware of in support of the motion. If the defendant has previously filed a motion under this section, the court shall not grant a subsequent motion if the defendant knew that the plaintiff met the criteria for payment for the additional trust claim identified in the subsequent motion at the time the earlier motion was filed.

(2) Within 10 days after receiving a motion under subsection (1), the plaintiff shall do 1 of the following:

(a) File the asbestos trust claims.

(b) File a written response with the court stating why there is insufficient evidence for the plaintiff to file the asbestos trust claims.

(c) File a written response with the court requesting a determination that the cost to file the asbestos trust claims exceeds the plaintiff’s reasonably anticipated recovery.

(3) Within 10 days after the plaintiff files a written response to the defendant’s motion, the court shall determine if there is sufficient basis for the plaintiff to file the asbestos trust claims identified in the motion. If the court determines that there is a sufficient basis for the plaintiff to file the asbestos trust claim that is the subject of a motion under subsection (1), the court shall stay the asbestos action until the plaintiff files the asbestos trust claim and produces all related trust claims materials.

(4) If the court determines that the cost of submitting an asbestos trust claim that is the subject of a motion under subsection (1) exceeds the plaintiff’s reasonably anticipated recovery, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff’s history of exposure to, usage of, or other connection to asbestos covered by the asbestos trust.

(5) The court shall not schedule the asbestos action for trial sooner than 60 days after the plaintiff complies with this section.

Sec. 3014. (1) Trust claims materials and trust governance documents are presumed to be relevant and authentic, and are admissible in evidence in an asbestos action. A claim of privilege does not apply to trust claims materials or trust governance documents.

(2) A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent at the time of asbestos trust identification, including, but not limited to, authorization for release of trust materials or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.

(3) Trust materials may be used to prove, without limitation, an alternative source for the cause of the plaintiff's alleged harm and may serve as a basis to allocate responsibility for the plaintiff's alleged harm.

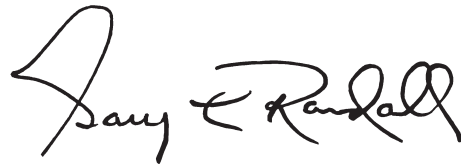
Sec. 3015. (1) If a plaintiff or person on the plaintiff's behalf files an additional asbestos trust claim after obtaining a judgment in an asbestos action, and if that asbestos trust was in existence at the time the plaintiff obtained the judgment, the trial court, on a motion by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to reopen and adjust the judgment by the amount of any subsequent asbestos trust payments obtained by the plaintiff and order any other relief that the court considers proper.

(2) A defendant or judgment debtor shall file any motion under this section within a reasonable time and not more than 1 year after the judgment was entered.

Sec. 3016. (1) This chapter applies to asbestos actions filed on or after the effective date of this chapter. This chapter also applies to any pending asbestos actions in which trial has not commenced on or before the effective date of this chapter. However, this chapter does not apply to a pending asbestos action in which trial has been scheduled to occur before November 1, 2018.

(2) If the application of this chapter would unconstitutionally affect a vested right, this chapter must only be applied prospectively.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor