

1 SB45
2 199427-6
3 By Senator Roberts
4 RFD: Judiciary
5 First Read: 05-MAR-19
6 PFD: 02/27/2019

1 SB45

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 Relating to asbestos trust claims; to add Article
12 35A, commencing with Section 6-5-690, to Chapter 5 of Title 6
13 of the Code of Alabama 1975, to create the Asbestos Exposure
14 Transparency Act; to require a plaintiff in an asbestos action
15 to file a sworn statement disclosing information regarding the
16 plaintiff's exposure to asbestos or, alternatively, file
17 available asbestos trust claims and produce all trust claims
18 materials before trial.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Article 35A, commencing with Section
21 6-5-690, is added to Chapter 5 of Title 6 of the Code of
22 Alabama 1975, to read as follows:

23 §6-5-690.

24 This act shall be known and may be cited as the
25 Asbestos Exposure Transparency Act.

26 §6-5-691. Definitions.

1 For the purposes of this article, the following
2 terms shall have the following meanings:

3 (1) ASBESTOS ACTION. A civil action arising out of,
4 based on, or related to the health effects of exposure to
5 asbestos and any derivative claim made by or on behalf of a
6 person exposed to asbestos or a representative, spouse,
7 parent, child, or other relative of that person. The term
8 asbestos action does not include claims alleging ovarian
9 cancer.

10 (2) ASBESTOS TRUST. A government-approved or
11 court-approved trust, qualified settlement fund, compensation
12 fund, or claims facility that is created as a result of an
13 administrative or legal action, a court-approved bankruptcy,
14 pursuant to 11 U.S.C. §524(g), 11 U.S.C. §1121(a), or other
15 applicable provision of law, that is intended, in whole or in
16 part, to provide compensation to claimants arising out of,
17 based on, or related to the health effects of exposure to
18 asbestos.

19 (3) TRUST CLAIM MATERIALS. A final executed proof of
20 claim and all documents and information submitted to or
21 received from an asbestos trust, including claim forms and
22 supplementary materials, affidavits, medical and health
23 records, depositions and trial testimony of the plaintiff and
24 others knowledgeable about the plaintiff's exposure history,
25 work history, exposure allegations, all documents that reflect
26 the status of a claim against an asbestos trust, and, if the
27 trust claim has been resolved.

1 (4) TRUST GOVERNANCE DOCUMENTS. All documents that
2 relate to eligibility and payment levels, including claims
3 payment matrices, trust distribution procedures, or plans for
4 reorganization, for an asbestos trust.

5 §6-5-692. Required disclosures by plaintiff.

6 (a) Subject to Section 6-5-693, within 90 days after
7 a plaintiff files an asbestos action, the plaintiff shall do
8 all of the following:

9 (1) Provide all parties with an affidavit, signed
10 under oath by the plaintiff, stating all of the following:

11 a. The plaintiff's name, address, date of birth,
12 Social Security number, marital status, occupation, and
13 employers, and if the plaintiff alleges exposure to asbestos
14 through another person, the identity of the other person, and
15 that person's relationship to the plaintiff.

16 b. The asbestos-related disease claimed to exist.

17 c. The plaintiff and plaintiff's counsel have
18 conducted an investigation into all potential sources of the
19 plaintiff's exposure to asbestos and identify with specificity
20 each and every source of exposure to asbestos that is
21 available or known to the plaintiff or plaintiff's counsel and
22 any person through which the plaintiff alleges exposure,
23 including all asbestos-containing products to which the
24 plaintiff or other person were exposed, whether from bankrupt
25 entities or otherwise, and all premises at which the plaintiff
26 and the other person were exposed to asbestos; the specific
27 location and manner of each alleged exposure to asbestos; the

1 beginning and ending dates of each alleged exposure; and the
2 specific connection of each defendant to the alleged exposure
3 to asbestos.

4 (2) Provide all parties with all supporting
5 documentation relating to this section.

6 (b) If a defendant presents evidence that the
7 plaintiff's affidavit is incomplete, the defendant may move
8 the court for an order to require the plaintiff to supplement
9 the affidavit. If the court determines that there is a
10 sufficient basis for the plaintiff to supplement the
11 affidavit, the court shall enter an order to require the
12 plaintiff to supplement the affidavit and shall stay the
13 action until the plaintiff supplements the affidavit as
14 provided by the court and produces the supplemental affidavit
15 to the parties.

16 (c) The court shall dismiss the plaintiff's claim
17 without prejudice if the plaintiff fails to provide the
18 information required in this section or fails to satisfy an
19 order to supplement the plaintiff's affidavit within 90 days
20 from the time the information is required to be provided to
21 the parties.

22 §6-5-693. Bankruptcy trust information.

23 (a) A plaintiff in an asbestos action need not
24 comply with Section 6-5-692, if, within 90 days after the
25 plaintiff files an asbestos action, the plaintiff files all
26 available asbestos trust claims and provides the parties with
27 all trust claim materials available to the plaintiff or

1 plaintiff's counsel in relation to the plaintiff's exposure to
2 asbestos. This section does not apply if the plaintiff
3 complies with Section 6-5-692.

4 (b) A plaintiff has a continuing duty to supplement
5 the information and materials provided under subsection (a)
6 within 30 days after the plaintiff supplements an asbestos
7 trust claim, receives additional information or materials
8 related to an asbestos trust claim, or files an additional
9 trust claim.

10 (c) Not less than 60 days before trial, if a
11 defendant presents evidence that the plaintiff has not filed
12 all available asbestos trust claims, as required under
13 subsection (a), the defendant may move the court for an order
14 to require the plaintiff to file additional trust claims. If a
15 defendant has previously filed a motion under this section,
16 the court shall not grant a subsequent motion if the defendant
17 knew that the claimant met the criteria for payment for the
18 additional trust claim identified in the subsequent motion at
19 the time the earlier motion was filed.

20 (d) Trial in an asbestos action may not begin until
21 at least 60 days after the plaintiff complies with this
22 section.

23 §6-5-694. Discovery.

24 (a) In an asbestos action, there shall be a
25 rebuttable presumption that trust claim materials and trust
26 governance documents are relevant, authentic, and admissible

1 in evidence. A claim of privilege does not apply to trust
2 claim materials or trust governance documents.

3 (b) A defendant in an asbestos action may seek
4 discovery from an asbestos trust. The plaintiff may not claim
5 privilege or confidentiality to bar discovery and shall
6 provide consent or other expression of permission that may be
7 required by the asbestos trust to release the information and
8 materials sought by the defendant.

9 Section 2. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 05-MAR-19

Read for the second time and placed on the calen-
dar with 1 substitute and..... 18-APR-19

Read for the third time and passed as amended 30-APR-19

Yeas 27
Nays 0

Patrick Harris,
Secretary.