

1 AN ACT relating to asbestos trust claims and declaring an emergency.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section, unless the context requires otherwise:*

6 *(a) "Asbestos action" means:*

7 *1. A claim for damages or other civil or equitable relief presented in a*
8 *civil action that arises out of, is based on, or is related to the health*
9 *effects of exposure to asbestos; and*

10 *2. Any other derivative claim made by or on behalf of an individual*
11 *exposed to asbestos or a representative, spouse, parent, child, or other*
12 *relative of the individual;*

13 *(b) "Asbestos trust" means a government-approved or court-approved trust,*
14 *qualified settlement fund, compensation fund, or claims facility that is*
15 *intended to provide compensation to claimants arising out of, based on, or*
16 *related to the health effects of exposure to asbestos and is created:*

17 *1. As a result of:*

18 *a. An administrative or legal action; or*

19 *b. A court-approved bankruptcy; or*

20 *2. Under 11 U.S.C. sec. 524(g), 11 U.S.C. sec. 1121(a), or another*
21 *applicable provision of law;*

22 *(c) "Trust claims materials" means a final executed proof of claim and all*
23 *other documents and information submitted to or received from an asbestos*
24 *trust, including but not limited to:*

25 *1. Claims forms and supplementary materials;*

26 *2. Affidavits;*

27 *3. Depositions and trial testimony;*

- 1 4. Work history;
2 5. Medical and health records;
3 6. All documents that reflect the status of a claim against an asbestos
4 trust; and
5 7. If the trust claim has been resolved, all documents that relate to the
6 resolution of the trust claim; and

7 (d) "Trust governance documents" means all documents that relate to
8 eligibility and payment levels for an asbestos trust, including but not limited
9 to:

- 10 1. Claims payment matrices;
11 2. Trust distribution procedures; and
12 3. Plans for reorganization.

13 (2) Not less than one hundred eighty (180) days before the initial date set for the trial
14 of an asbestos action, the plaintiff shall file all available asbestos trust claims and
15 provide all parties with:

16 (a) A sworn statement signed by the plaintiff and plaintiff's counsel indicating
17 that an investigation has been conducted and that all asbestos trust claims
18 that can be made by the plaintiff or any person on the plaintiff's behalf have
19 been completed and filed. A deferral or placeholder claim that is missing
20 necessary documentation for the asbestos trust to review and pay the claim
21 does not meet the requirements of this paragraph; and

22 (b) All trust claims materials from the plaintiff and all lawyers, law firms, and
23 other authorized representatives retained by or on behalf of the plaintiff
24 relating to exposure to asbestos. Documents shall be accompanied by an
25 affidavit certifying that they are true and complete.

26 (3) A plaintiff has a continuing duty to supplement the information and materials
27 required under subsection (2) of this section within thirty (30) days of the

1 plaintiff:

2 (a) Supplementing an existing asbestos trust claim;

3 (b) Receiving additional information or materials related to an asbestos trust
4 claim; or

5 (c) Filing any additional asbestos trust claims.

6 (4) (a) Not less than ninety (90) days before the trial of an asbestos action, if a
7 defendant believes the plaintiff has not filed all asbestos trust claims as
8 required under subsections (2) and (3) of this section, the defendant may
9 move the court for an order requiring the plaintiff to file additional claims.

10 (b) The motion shall identify each asbestos trust claim the defendant believes
11 the plaintiff can file.

12 (c) If the court determines there is sufficient basis for the plaintiff to file one
13 (1) or more additional asbestos trust claims identified by the defendant, the
14 court shall stay the asbestos action until the plaintiff files the additional
15 claims and produces all related trust claims materials.

16 (d) The court shall not:

17 1. Grant a subsequent motion under this subsection for any claims in
18 which the defendant knew the plaintiff met the payment criteria for
19 the additional claim at the time an earlier motion was filed by the
20 defendant; or

21 2. Schedule the asbestos action for trial sooner than sixty (60) days after
22 the plaintiff complies with this subsection.

23 (5) A defendant in an asbestos action may seek discovery from an asbestos trust. The
24 plaintiff may not claim privilege or confidentiality to bar discovery and shall
25 provide consent at the time the asbestos trust is identified, including but not
26 limited to:

27 (a) Authorization for release of trust materials; and

1 (b) Any other expression of permission that may be required by the asbestos
 2 trust to release materials sought by the defendant.

3 (6) For an asbestos action:

4 (a) Trust claims materials and trust governance documents are:

5 1. Presumed to be relevant and authentic;

6 2. Admissible in evidence; and

7 3. Not subject to a claim of privilege;

8 (b) The jury shall not be informed of the specific amount of consideration paid
 9 by an asbestos trust to a claimant in resolution of a claim; and

10 (c) The filing of an asbestos trust claim is an active assertion of a claim
 11 sufficient to allow a jury to consider apportionment of fault as to that trust
 12 under KRS 411.182.

13 (7) The court shall impose sanctions if a plaintiff fails to comply with this section,
 14 including but not limited to:

15 (a) Staying discovery;

16 (b) Delaying a trial date; and

17 (c) If the plaintiff's actions are willful, dismissing the asbestos action with
 18 prejudice.

19 ➔Section 2. This Act may be cited to as the Kentucky Asbestos Trust Claims
 20 Transparency Act.

21 ➔Section 3. Whereas the United States Supreme Court in *Amchem Products, Inc.*
 22 *v. Windsor*, 521 U.S. 591, 598 (1997), described the asbestos litigation as a crisis; and
 23 over 100 employers have declared bankruptcy at least partially due to asbestos-related
 24 liability; and these bankruptcies have resulted in a search for more solvent companies,
 25 resulting in over 8,500 companies being named as asbestos defendants, including many
 26 small- and medium-sized companies, in industries that cover 85 percent of the United
 27 States economy; and asbestos claimants often seek compensation for alleged asbestos-

1 related conditions from solvent defendants in civil actions and from trusts or claims
2 facilities formed in asbestos bankruptcy proceedings; and there is limited coordination
3 and transparency between these two paths to recovery; and an absence of transparency
4 between the asbestos bankruptcy trust claim and the civil court systems has resulted in the
5 suppression of evidence in asbestos actions and potential fraud; an emergency is declared
6 to exist, and this Act takes effect upon its passage and approval by the Governor or upon
7 its otherwise becoming a law.