

1 AN ACT relating to asbestos bankruptcy 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 *As used in Section 1 to 3 of this Act unless the context requires otherwise:*

6 *(1) "Asbestos action" means a claim for damages or other civil or equitable relief*
7 *presented in a civil action arising out of, based on, or related to the health effects*
8 *of exposure to asbestos, including:*

9 *(a) Loss of consortium;*

10 *(b) Wrongful death;*

11 *(c) Mental or emotional injury;*

12 *(d) Risk or fear of disease or other injury;*

13 *(e) Costs of medical monitoring or surveillance; and*

14 *(f) Any other derivative claim made by or on behalf of a person exposed to*
15 *asbestos or a representative, spouse, parent, child, or other relative of that*
16 *person.*

17 *The term does not include a claim for compensation benefits pursuant to KRS*
18 *Chapter 342 or for veterans' benefits;*

19 *(2) "Asbestos trust" means a government-approved or court-approved trust,*
20 *qualified settlement fund, compensation fund, or claims facility created as a*
21 *result of an administrative or legal action, a court-approved bankruptcy, or*
22 *reorganization plan established pursuant to 11 U.S.C. sec. 524(g) or 11 U.S.C.*
23 *sec. 1121(a) or other applicable provision of law, that is intended to provide*
24 *compensation to claimants arising out of, based on, or related to the health*
25 *effects of exposure to asbestos;*

26 *(3) "Trust claims materials" means a final executed proof of claim and all other*
27 *documents and information related to a claim against an asbestos trust,*

1 including:

2 (a) Claims forms and supplementary materials;

3 (b) Affidavits;

4 (c) Depositions and trial testimony;

5 (d) Work history;

6 (e) Medical and health records;

7 (f) Documents reflecting the status of a claim against an asbestos trust; and

8 (g) If the asbestos trust claim has settled, all documents relating to the
 9 settlement of the asbestos trust claim; and

10 (4) "Trust governance documents" means all documents that relate to eligibility and
 11 payment levels for an asbestos trust, including:

12 (a) Claims payment matrices;

13 (b) Trust distribution procedures; or

14 (c) Plans for reorganization.

15 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
 16 READ AS FOLLOWS:

17 (1) For an asbestos action filed in this state, the plaintiff shall:

18 (a) For each action, provide all parties with a sworn statement identifying all
 19 asbestos trust claims that have been filed by the plaintiff or by anyone on
 20 the plaintiff's behalf, including claims with respect to asbestos-related
 21 conditions other than those that are the basis for the asbestos action or that
 22 potentially could be filed by the plaintiff against an asbestos trust. The
 23 sworn statement shall be provided no later than one hundred twenty (120)
 24 days prior to the date set for trial for the asbestos action. The statement
 25 shall include:

26 1. For each asbestos trust claim or potential asbestos trust claim
 27 identified in the sworn statement:

- 1 a. The name, address, and contact information for the asbestos
2 trust;
- 3 b. The amount claimed or to be claimed by the plaintiff;
- 4 c. The date the plaintiff filed the claim;
- 5 d. The disposition of the claim; and
- 6 e. Whether there has been a request to defer, delay, suspend, or toll
7 the claim; and
- 8 2. An attestation from the plaintiff, under penalties of perjury, that the
9 sworn statement is complete and is based on a good faith investigation
10 of all potential claims against asbestos trusts;
- 11 (b) Make available to all parties all trust claims materials for each asbestos
12 trust claim that has been filed by the plaintiff or by anyone on the plaintiff's
13 behalf against an asbestos trust, including any asbestos-related disease; and
- 14 (c) Supplement the information and materials provided pursuant to this section
15 within ninety (90) days after the plaintiff files an additional asbestos trust
16 claim, supplements an existing asbestos trust claim, or receives additional
17 information or materials related to any claim or potential claim against an
18 asbestos trust.
- 19 (2) (a) If a court finds that a plaintiff failed to make available to all parties all trust
20 claims materials as required by this section, the failure shall constitute
21 grounds for the court to extend the trial date in an asbestos action.
- 22 (b) If the court finds that a plaintiff failed to provide all of the information
23 required under subsection (1) of this section within one hundred twenty
24 (120) days prior to the trial date, the court shall stay the action.
- 25 (c) If a court finds that a plaintiff failed to provide all of the information
26 required under Sections 1 to 3 of this Act, the court may subject the plaintiff
27 to sanctions as provided in the Rules of Civil Procedure and any other relief

1 for the defendants that the court considers just and proper.

2 (3) If in meeting the requirements of subsection (1) of this section, a plaintiff
3 identifies a potential asbestos trust claim:

4 (a) The judge shall have the discretion to stay the asbestos action until the
5 plaintiff files the asbestos trust claim and provides all parties with all trust
6 claims materials for the claim; and

7 (b) The plaintiff shall also state whether there has been a request to defer,
8 delay, suspend, or toll the claim against the asbestos trust.

9 (4) (a) Trust claims materials and trust governance documents are presumed to be
10 relevant and authentic and are admissible in evidence. No claims of
11 privilege apply to any trust claims materials or trust governance documents.

12 (b) A defendant in an asbestos action may seek discovery from an asbestos
13 trust. The plaintiff may not claim privilege or confidentiality to bar
14 discovery and shall provide consent or other expression of permission that
15 may be required by the asbestos trust to release information and materials
16 sought by a defendant.

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

19 (1) Not less than ninety (90) days before trial, if a defendant identifies an asbestos
20 trust claim not previously identified by the plaintiff that the defendant reasonably
21 believes the plaintiff can file, the defendant shall meet and confer with the
22 plaintiff to discuss why the defendant believes the plaintiff has an additional
23 asbestos trust claim, and thereafter the defendant may move the court for an
24 order to require the plaintiff to file the asbestos trust claim. The defendant shall
25 produce or describe the documentation it possesses or is aware of in support of
26 the motion.

27 (2) Within ten (10) days of receiving the defendant's motion under subsection (1) of

1 this section, the plaintiff shall, for each asbestos trust claim identified by the
2 defendant, file one (1) of the following:

3 (a) The asbestos trust claim; or

4 (b) A written response with the court, either:

5 1. Setting forth the reasons why there is insufficient evidence for the
6 plaintiff to file the asbestos trust claim; or

7 2. Requesting a determination that the plaintiff's expenses or attorney's
8 fees and expenses to prepare and file the asbestos trust claim identified
9 in the defendant's motion exceed the plaintiff's reasonably anticipated
10 recovery from the trust.

11 (3) (a) If the court determines that there is a sufficient basis for the plaintiff to file
12 the asbestos trust claim identified by a defendant, the court shall order the
13 plaintiff to file the asbestos trust claim and shall stay the asbestos action
14 until the plaintiff files the asbestos trust claim and provides all parties with
15 all trust claims materials no later than thirty (30) days before trial.

16 (b) If the court determines that the plaintiff's expenses or attorney's fees and
17 expenses to prepare and file the asbestos trust claim identified in the
18 defendant's motion exceed the plaintiff's reasonably anticipated recovery
19 from the asbestos trust, the court shall stay the asbestos action until the
20 plaintiff files with the court and provides all parties with a verified
21 statement of the plaintiff's history of exposure, usage or other connection to
22 asbestos covered by the asbestos trust.

23 (4) Not less than thirty (30) days prior to trial in an asbestos action, the court shall
24 enter into the record a trust claims document that identifies each claim the
25 plaintiff has made against an asbestos trust.

26 (5) If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim
27 is resolved, the filing of the asbestos trust claim may be considered as relevant

1 and admissible evidence.

2 (6) Trust claim materials that are sufficient to entitle a claim to consideration for
3 payment under the applicable trust governance documents may be sufficient to
4 support a jury finding that the plaintiff may have been exposed to products for
5 which the asbestos trust was established to provide compensation and that such
6 exposure may be a substantial factor in causing the plaintiff's injury that is at
7 issue in the asbestos action.

8 (7) In any asbestos action in which damages are awarded, a defendant is entitled to a
9 setoff or credit in the amount of the valuation established under the applicable
10 trust governance documents, including payment percentages for asbestos trust
11 claims pending at trial or that potentially could be filed by the plaintiff against an
12 asbestos trust. If multiple defendants are found liable for damages, the court
13 shall distribute the amount of setoff or credit proportionally between the
14 defendants, according to the liability of each defendant. This section shall not
15 affect apportionment of fault with respect to settling nonparties at trial.

16 ➔Section 4. Sections 1 to 3 of this Act may be cited to as the Asbestos
17 Bankruptcy Trust Claims Transparency Act.

18 ➔Section 5. Whereas The United States Supreme Court in Amchem Products,
19 Inc. v. Windsor, 521 U.S. 591, 598 (1997), described the asbestos litigation as a crisis;
20 and over one hundred employers have declared bankruptcy at least partially due to
21 asbestos-related liability; and these bankruptcies have resulted in a search for more
22 solvent companies, resulting in over eight thousand five hundred companies being named
23 as asbestos defendants, including many small- and medium-sized companies, in industries
24 that cover eighty-five percent of the United States economy; and asbestos claimants often
25 seek compensation for alleged asbestos-related conditions from solvent defendants in
26 civil actions and from trusts or claims facilities formed in asbestos bankruptcy
27 proceedings; and there is limited coordination and transparency between these two paths

1 to recovery; and an absence of transparency between the asbestos bankruptcy trust claim
2 and the civil court systems has resulted in the suppression of evidence in asbestos actions
3 and potential fraud; an emergency is declared to exist, and this Act takes effect upon its
4 passage and approval by the Governor or upon its otherwise becoming a law.