HB100

196498-2

By Representative Carns

RFD: Commerce and Small Business

First Read: 05-MAR-19
SYNOPSIS: This bill would create the Asbestos Trust Claims Transparency Act.

This bill would require plaintiffs in an asbestos actions to file all available asbestos trust claims and produce all trust claims materials before trial.

A BILL
TO BE ENTITLED
AN ACT

Relating to asbestos trust claims; to add Article 35A, commencing with Section 6-5-690, to Chapter 5 of Title 6 of the Code of Alabama 1975, to create the Asbestos Trust Claims Transparency Act; to require plaintiffs in asbestos actions to file all available asbestos trust claims and produce all trust claims materials before trial.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. Article 35A, commencing with Section 6-5-690, is added to Chapter 5 of Title 6 of the Code of Alabama 1975, to read as follows:

§6-5-690.
This act shall be known and may be cited as the Asbestos Trust Claims Transparency Act.

§6-5-691. Findings and purpose.

(a) The Legislature finds and declares the following:

(1) Over 120 employers have declared bankruptcy at least partially due to asbestos-related liability.

(2) Scores of trusts have been established in bankruptcy proceedings to form a multi-billion dollar compensation system for asbestos claimants outside of the civil courts, and new asbestos trusts continue to be formed.

(3) Asbestos claimants typically seek compensation from solvent defendants in civil actions and from trusts or claims facilities formed in asbestos bankruptcy proceedings.

(4) There is limited transparency between these two paths to recovery.

(5) An absence of transparency with respect to asbestos bankruptcy trust claims has resulted in the suppression of evidence in asbestos actions.

(6) A federal bankruptcy court found that trust claim filings are being manipulated and information is being withheld in order to inflate recoveries in asbestos actions.
(7) The lack of transparency regarding trust claims information harms Alabama employers and their employees, shareholders, and communities. Companies that pay inflated settlements and awards in asbestos cases have fewer resources to pay future claimants and invest in the state's economy.

(8) Transparency with respect to asbestos trust claims and claims made in civil asbestos actions promotes the integrity of asbestos actions and furthers recovery longevity to help future plaintiffs.

(b) The Legislature declares that it is the purpose of this act to do both of the following:

(1) Provide transparency with respect to asbestos trust claims and claims made in civil asbestos actions.

(2) Reduce the opportunity for withholding or suppressing trust-related exposure evidence in asbestos actions.

§6-5-692. Definitions.

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

(1) ASBESTOS ACTION. A claim for damages or other relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos and any derivative claim made by or on behalf of an individual exposed to asbestos or a representative, spouse, parent, child, or other relative of that individual.

(2) ASBESTOS TRUST. 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, pursuant to 11 U.S.C. §524(g), 11 U.S.C. §1121(a), or other applicable law, that is intended, in whole or in part, to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.

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

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

§6-5-693. Required disclosures by plaintiff.

(a) Within 30 days after an asbestos action is filed, the plaintiff shall do all of the following:

(1) File all available asbestos trust claims and provide all parties to the action with a sworn statement indicating that an investigation has been conducted and that
all asbestos trust claims that can be made by the plaintiff have been filed.

(2) Provide the parties with all trust claim materials from the plaintiff and all law firms connected to the plaintiff in relation to exposure to asbestos.

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

§6-5-694. Identification of additional or alternative asbestos trusts by defendant.

(a) Not less than 60 days before trial, if a defendant believes that the plaintiff has not filed all available asbestos trust claims, as required under Section 6-5-693, the defendant may move the court for an order to require the plaintiff to file additional trust claims. The defendant shall identify the asbestos trust claims the defendant believes the plaintiff is eligible to file.

(b) If the court determines that there is a sufficient basis for the plaintiff to file an asbestos trust claim identified by the defendant, the court shall stay the action until the plaintiff files the trust claim and produces all related trust claim materials.

(c) If the court orders a stay of the proceedings under subsection (b), the asbestos action may not be set for
1 trial until at least 60 days after the plaintiff complies with
2 this section.

§6-5-695. Discovery.

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

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

§6-5-696. Setoff.

In an asbestos action in which damages are awarded,
a defendant is entitled to a setoff in the amount the
plaintiff has received from an asbestos trust and, for trust
claims not yet paid as of the date of entry of judgment, the
amount the plaintiff will receive as specified in the asbestos
trust governance documents. If multiple defendants are found
liable for damages, the court shall distribute the amount of
setoff proportionally between the defendants, according to the
liability of each defendant.

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