

By: Representatives White, Baker

To: Judiciary A

HOUSE BILL NO. 1426

1 AN ACT TO CREATE THE ASBESTOS TRANSPARENCY TRUST ACT; TO
 2 CREATE NEW SECTION 11-67-1, MISSISSIPPI CODE OF 1972, TO ENACT A
 3 SHORT TITLE; TO CREATE NEW SECTION 11-67-3, MISSISSIPPI CODE OF
 4 1972, TO MAKE LEGISLATIVE FINDINGS; TO CREATE NEW SECTION 11-67-5,
 5 MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW
 6 SECTION 11-67-7, MISSISSIPPI CODE OF 1972, TO REQUIRE PLAINTIFF
 7 DISCLOSURES; TO CREATE NEW SECTION 11-67-9, MISSISSIPPI CODE OF
 8 1972, TO REQUIRE IDENTIFICATION OF ADDITIONAL ASBESTOS TRUST
 9 CLAIMS BY A DEFENDANT; TO CREATE NEW SECTION 11-67-11, MISSISSIPPI
 10 CODE OF 1972, TO PROVIDE FOR ADMISSIBILITY OF EVIDENCE; TO CREATE
 11 NEW SECTION 11-67-13, MISSISSIPPI CODE OF 1972, TO ENACT SANCTIONS
 12 FOR FAILURE TO PROVIDE INFORMATION; TO CREATE NEW SECTION
 13 11-67-15, MISSISSIPPI CODE OF 1972, TO MAKE TRANSITION PROVISIONS;
 14 AND FOR RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** The following shall be codified as Section
 17 11-67-1, Mississippi Code of 1972:

18 11-67-1. **Title.** This chapter may be cited as the "Asbestos
 19 Bankruptcy Trust Claims Transparency Act."

20 **SECTION 2.** The following shall be codified as Section
 21 11-67-3, Mississippi Code of 1972:

22 11-67-3. **Declaration of Legislative Intent.** (1) The
 23 Legislature finds and determines that:



24 (a) Asbestos is a mineral that was widely used prior to
25 the 1980s for insulation, fireproofing, and other purposes;

26 (b) Exposure to asbestos has been causally associated
27 with mesothelioma and lung cancer, as well as nonmalignant
28 conditions such as asbestosis, pleural plaques, and diffuse
29 pleural thickening;

30 (c) Approximately one hundred (100) employers have
31 declared bankruptcy at least partially due to asbestos-related
32 liability;

33 (d) Over ten thousand (10,000) companies have been
34 named as asbestos defendants, including many small- and
35 medium-sized companies, in industries that cover eighty-five
36 percent (85%) of the United States economy;

37 (e) Scores of trusts have been established in
38 asbestos-related bankruptcy proceedings to form a multi-billion
39 dollar asbestos bankruptcy trust compensation system outside of
40 the tort system, and new asbestos trusts continue to be
41 established;

42 (f) Asbestos plaintiffs often seek compensation both
43 from solvent defendants in civil actions and from trusts or claims
44 facilities formed in asbestos-related bankruptcy proceedings;

45 (g) There is limited coordination and transparency
46 between these two (2) paths to recovery, which has resulted in the
47 suppression of evidence in asbestos actions; and



48 (h) Justice is promoted by transparency with respect to
49 asbestos bankruptcy trust claims in civil asbestos actions.

50 (2) Now therefore, it is the intent of the Legislature to:

51 (a) Provide transparency with respect to asbestos
52 bankruptcy trust claims in civil asbestos actions by creating a
53 substantive right for defendants to obtain bankruptcy trust
54 discovery;

55 (b) Reduce the opportunity for oversight or suppression
56 of evidence in asbestos actions; and

57 (c) Enhance the ability of courts to oversee and manage
58 asbestos cases.

59 **SECTION 3.** The following shall be codified as Section
60 11-67-5, Mississippi Code of 1972:

61 11-67-5. **Definitions.** The following words and phrases as
62 used in this chapter have the meaning ascribed to them in this
63 section, unless the context clearly requires otherwise:

64 (a) "Asbestos" includes, without limitation,
65 chrysotile, amosite, crocidolite, tremolite asbestos,
66 anthophyllite asbestos, actinolite asbestos, asbestiform winchite,
67 asbestiform richterite, asbestiform amphibole minerals, and any of
68 these minerals that have been chemically treated or altered,
69 including all minerals defined as asbestos in 29 CFR 1910 at the
70 time the asbestos action is filed.

71 (b) "Asbestos action" means a claim for damages or
72 other civil or equitable relief presented in a civil action



73 arising out of, based on, or related to the health effects of
74 exposure to asbestos, including, but not limited to, loss of
75 consortium, wrongful death, mental or emotional injury.

76 (c) "Asbestos trust" means a government-approved or
77 court-approved trust, qualified settlement fund, compensation fund
78 or claims facility created as a result of an administrative or
79 legal action, a court-approved bankruptcy, or pursuant to 11
80 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other applicable provision
81 of law, that is intended to provide compensation to claimants
82 arising out of, based on, or related to the health effects of
83 exposure to asbestos.

84 (d) "Asbestos trust claim" includes, but is not limited
85 to, any claim or demand for compensation for asbestos-related
86 injuries from an asbestos trust.

87 (e) "Plaintiff" means the exposed person, deceased or
88 living, and the person bringing the asbestos action, including a
89 personal representative if the asbestos action is brought by an
90 estate, or a conservator or next friend if the asbestos action is
91 brought on behalf of a minor or legally incapacitated individual.

92 (f) "Trust materials" means a final executed proof of
93 claim and all other documents and information related to a claim
94 against an asbestos trust and any other information that the
95 plaintiff submits to the asbestos trust, including claims forms
96 and supplementary materials, affidavits, correspondence,
97 depositions and trial testimony, work history, medical and health



98 records, documents reflecting the status of a claim against an
99 asbestos trust, and, if the trust claim has settled, all documents
100 relating to the settlement of the trust claim.

101 (g) "Trust governance documents" means all documents
102 that relate to eligibility and payment levels, including, but not
103 limited to, claims payment matrices, trust distribution
104 procedures, or plans for reorganization, for an asbestos trust.

105 **SECTION 4.** The following shall be codified as Section
106 11-67-7, Mississippi Code of 1972:

107 11-67-7. **Required disclosures by the plaintiff.** (1) Within
108 thirty (30) days after an asbestos action is filed, or by August
109 1, 2017, whichever is later, the plaintiff shall do all of the
110 following:

111 (a) Provide the court and parties with a sworn
112 statement signed by the plaintiff and the plaintiff's counsel,
113 under penalties of perjury, that all asbestos trust claims that
114 can be made by the plaintiff have been filed and that includes the
115 following:

116 (i) A statement that an investigation of all
117 asbestos trust claims has been conducted;

118 (ii) A list identifying each asbestos trust claim
119 that has been filed by the plaintiff;

120 (iii) A list identifying each asbestos trust claim
121 that can be made by the plaintiff, which has not been filed for
122 the sole permissible reason that the cost of submitting an



123 asbestos trust claim exceeds the plaintiff's reasonably
124 anticipated recovery; and

125 (iv) Whether there has been a request to defer,
126 delay, suspend, toll, withdraw, or otherwise alter the standing of
127 any asbestos trust claim, and provide the status and disposition
128 of each asbestos trust claim.

129 (b) Provide all parties with all trust materials,
130 including trust materials that relate to conditions other than
131 those that are the basis for the asbestos action and including all
132 trust materials from all law firms connected to the plaintiff in
133 relation to exposure to asbestos, including anyone at a law firm
134 involved in the asbestos action, any referring law firm, and any
135 other firm that has filed an asbestos trust claim for the
136 plaintiff. Documents should be accompanied by a custodial
137 affidavit from the asbestos trust, certifying that the trust
138 materials submitted to defendants are true and complete.

139 (c) If the plaintiff's asbestos trust claim is based on
140 secondary exposure to asbestos through another individual or
141 individuals, the plaintiff shall produce all trust materials
142 submitted by the other individual or individuals to any asbestos
143 trusts if the materials are available to the plaintiff or the
144 plaintiff's counsel.

145 (2) The plaintiff has a continuing duty to supplement the
146 information and materials required under subsection (1) and the
147 supplementation shall be made no later than thirty (30) days after



148 the plaintiff supplements an existing asbestos trust claim,
149 receives additional information or materials related to an
150 asbestos trust claim, or files an additional asbestos trust claim.

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

153 (4) An asbestos action may not be set for trial until at
154 least one hundred eighty (180) days after the requirements of
155 subsection (1) are met.

156 (5) Not less than thirty (30) days before trial in an
157 asbestos action, the court shall enter into the record a document
158 that identifies every asbestos trust claim made by the plaintiff.

159 **SECTION 5.** The following shall be codified as Section
160 11-67-9, Mississippi Code of 1972:

161 11-67-9. **Identification of additional asbestos trust claims**
162 **by defendant; trust record.** (1) A defendant may file a motion
163 requesting a stay of the proceeding on or before the later of the
164 sixtieth day before the date of trial in the action is set to
165 commence or any other such time for which the defendant has a good
166 faith reasonable basis to request a stay. The motion shall
167 identify the asbestos trust claims not previously identified that
168 the defendant believes the plaintiff can file and include
169 information supporting the asbestos trust claims.

170 (2) Within ten (10) days of receiving the defendant's
171 motion, the plaintiff shall:

172 (a) File the asbestos trust claims; or



173 (b) File a written response with the court requesting a
174 determination that the cost to file the asbestos trust claims
175 exceeds the plaintiff's reasonably anticipated recovery.

176 (3) (a) Subject to paragraph (b) of this subsection (3), if
177 the court determines that there is a basis for the plaintiff to
178 file an asbestos trust claim identified in the motion to stay, the
179 court shall stay the asbestos action until the plaintiff files the
180 asbestos trust claim and produces all related trust claims
181 materials.

182 (b) If the court determines that the cost of submitting
183 an asbestos trust claim exceeds the plaintiff's reasonably
184 anticipated recovery, the court shall stay the asbestos action
185 until the plaintiff files with the court and provides all parties
186 with a verified statement of the plaintiff's history of exposure,
187 usage, or other connection to asbestos covered by that asbestos
188 trust.

189 (4) An asbestos action may not be set for trial until at
190 least sixty (60) days after the plaintiff complies with the
191 requirements of this section.

192 **SECTION 6.** The following shall be codified as Section
193 11-67-11, Mississippi Code of 1972:

194 11-67-11. **Discovery; use of materials.** (1) Trust materials
195 and trust governance documents are presumed to be relevant and
196 authentic, and are admissible in evidence in an asbestos action.



197 A claim of privilege does not apply to any trust materials or
198 trust governance documents.

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

206 (3) Trust materials that are sufficient to entitle a claim
207 to consideration for payment under the applicable trust governance
208 documents are sufficient to support a jury finding that the
209 plaintiff was exposed to products for which the trust was
210 established to provide compensation and that, under applicable
211 law, such exposure is a substantial contributing factor in causing
212 the plaintiff's injury that is at issue in the asbestos action.

213 **SECTION 7.** The following shall be codified as Section
214 11-67-13, Mississippi Code of 1972:

215 11-67-13. **Failure to provide information; sanctions.** (1)

216 If the plaintiff files an asbestos trust claim after the plaintiff
217 obtains a judgment in an asbestos action, and that asbestos trust
218 was in existence at the time the plaintiff obtained the judgment,
219 the trial court, on motion by a defendant or judgment debtor
220 seeking sanctions or other relief, has jurisdiction to reopen the
221 judgment in the asbestos action and adjust the judgment and order



222 any relief to the parties that the court considers just and
223 proper.

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

227 **SECTION 8.** The following shall be codified as Section
228 11-67-15, Mississippi Code of 1972:

229 11-67-15. **Application.** (1) This chapter shall apply to all
230 asbestos actions filed on or after July 1, 2017, and to all
231 pending asbestos tort actions in which trial has not commenced as
232 of July 1, 2017.

233 (2) This chapter may only be applied retroactively if the
234 application of a provision in this chapter would
235 unconstitutionally affect a vested right.

236 **SECTION 9.** This act shall take effect and be in force from
237 and after July 1, 2017.

