

By: Representatives White, Baker

To: Judiciary A

HOUSE BILL NO. 1426  
(As Sent to Governor)

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 for  
25 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 multibillion  
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 by a



73 plaintiff arising out of, based on, or related to the health  
74 effects of exposure to asbestos, including, but not limited to,  
75 loss of 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, under penalties of perjury,  
113 that all asbestos trust claims that can be made by the plaintiff  
114 have been filed and that includes the following:

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

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

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



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

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

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

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

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



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

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

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

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

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

160 11-67-9. **Identification of additional asbestos trust claims**  
161 **by defendant; trust record.** (1) A defendant may file a motion  
162 requesting a stay of the proceeding on or before the later of the  
163 sixtieth day before the date of trial in the action is set to  
164 commence or any other such time for which the defendant has a good  
165 faith reasonable basis to request a stay. The motion shall  
166 identify the asbestos trust claims not previously identified that  
167 the defendant believes the plaintiff can file and include  
168 information supporting the asbestos trust claims.

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

171 (a) File the asbestos trust claims; or



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

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

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

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

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

193 11-67-11. **Discovery; use of materials.** (1) Trust materials  
194 and trust governance documents are presumed to be relevant and  
195 authentic, and are admissible in evidence in an asbestos action.





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

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

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

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

214 11-67-13. **Failure to provide information; sanctions.** (1)

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



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

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

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

228 11-67-15. **Application.** This chapter shall apply to all  
229 asbestos actions filed on or after July 1, 2017, and to all  
230 pending asbestos tort actions in which trial has not commenced as  
231 of July 1, 2017.

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

