ENGROSSED SENATE
BILL NO. 1792 By: Jolley of the Senate

and

Jordan of the House

[asbestos tort actions - Asbestos Claims Transparency Act - codification - noncodification - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 81 of Title 76, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Asbestos Claims Transparency Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 82 of Title 76, unless there is created a duplication in numbering, reads as follows:

As used in the Asbestos Claims Transparency Act:

1. "Asbestos" means all minerals defined as "asbestos" in 29 CFR 1910, as amended;

2. "Asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes a

claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos;

3. "Asbestos tort action" means a tort action based on an asbestos claim;

4. "Asbestos trust", except as otherwise provided in subsection E of Section 5 of this act, means and encompasses all trust entities, claims agents, or claims processing facilities that are created pursuant to the jurisdiction of a United States Bankruptcy Court and Section 524(g) of Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 524(g), or other applicable provision of law, that are formed for the purpose of compensating claimants asserting eligible asbestos claims, and that are in existence on the date initially set for trial in the asbestos tort action;

5. "Asbestos trust claim" means any claim for compensation by an exposed person or the exposed person's representative against any asbestos trust;

6. "Cancer" means a malignant condition;

7. "Claimant" means any person asserting an asbestos claim or asbestos trust claim. "Claimant" includes a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff;

8. "Exposed person" means any person whose exposure to asbestos or to asbestos-containing products is the basis for an asbestos claim;

9. "Noncancer" means a nonmalignant condition;

10. "Proof of claim" means any form of documentation that a potential claimant against an asbestos trust submits or provides to the asbestos trust that attests to or asserts the existence of any liquidated or unliquidated asbestos claim that the claimant may have against the asbestos trust or its predecessors under any theory of law;

11. "Trust claims material" means documents constituting an asbestos trust claim, including, but not limited to, claim forms, proofs of claim, and informational material required by an asbestos trust to be submitted by a claimant in order to have the claim evaluated by the asbestos trust and relied upon by the asbestos trust in making its compensation determination; and

12. "Trust governance documents" means and encompasses all documents that are set forth in the plan of reorganization and related orders, terms, conditions, distribution procedures, payment schedules and matrixes, evaluation paradigms and adjustment formulas, and all other policies and procedures that are utilized to

determine a claimant's eligibility for, and the amounts or levels of, payment to a claimant by an asbestos trust.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 83 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. 1. a. Within thirty (30) days after filing the complaint or other initial pleading in an asbestos tort action that is not otherwise barred or deferred under applicable law or within thirty (30) days of the effective date of this section with respect to asbestos tort actions that are pending on that effective date, a claimant shall provide to all of the parties in the action a sworn statement by the claimant, under penalty of perjury, identifying all existing asbestos trust claims made by or on behalf of the claimant and all trust claims material pertaining to each identified asbestos trust claim. The sworn statement shall disclose the date on which each asbestos trust claim against the relevant asbestos trust was made and whether any request for a deferral, delay, suspension, or tolling of the asbestos trust claims process has been submitted.

b. The submission of the sworn statement under subparagraph a of this paragraph shall be in addition

to any disclosure requirements otherwise imposed by law, civil rule, court order or ruling, applicable agreement or stipulation, local rule, or case management order.

2. If the claimant, subsequent to the submission of the sworn statement under subparagraph a of paragraph 1 of this subsection, files with or submits to any asbestos trust additional asbestos trust claims not previously disclosed, the claimant shall provide to all of the parties in the asbestos tort action an amendment updating the sworn statement and identifying the additional asbestos trust claims. The claimant shall provide any amendment under this paragraph within thirty (30) days of filing an additional asbestos trust claim with, or submitting an additional asbestos trust claim to, any asbestos trust.

3. With respect to any asbestos trust claim that a claimant discloses under paragraph 2 of this subsection in an amendment to the sworn statement, the claimant shall provide to all of the parties in the asbestos tort action all trust claims material pertaining to each additional asbestos trust claim identified in that amendment. The claimant shall provide the trust claims material under this paragraph within thirty (30) days of filing or submitting each additional asbestos trust claim.

B. Failure to provide to all of the parties in the asbestos tort action all trust claims material as required by this section in a

timely manner shall constitute grounds for the court to decline to assign an initial trial date or extend the date set for trial in the action.

C. Nothing in this section prevents a court of competent jurisdiction from requiring any disclosures in addition to the disclosures required under this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 84 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. Any defendant in an asbestos tort action may file a motion with the court, with notice to the claimant and to all of the parties in the action, for an order to stay the proceedings. A defendant's motion to stay the proceedings shall set forth credible evidence that demonstrates all of the following:

1. The identities of all asbestos trusts not previously disclosed by the claimant pursuant to Section 3 of this act against which the claimant has not made any asbestos trust claims but against which the defendant in good faith believes the claimant may make a successful asbestos trust claim;

2. The information that the defendant believes supports the additional asbestos trust claims described in paragraph 1 of this subsection; and

3. A description of the information sufficient to meet the asbestos trust claim requirements of the asbestos trusts described in paragraph 1 of this subsection.

B. Within fifteen (15) days after the filing of the defendant's motion for an order to stay the proceedings under subsection A of this section, the claimant may do either of the following:

1. File the asbestos trust claims with or submit them to the asbestos trusts identified in the defendant's motion for an order to stay the proceedings. The submission to the court and to all of the parties in the asbestos tort action of proof demonstrating that the asbestos trust claims identified in the defendant's motion to stay the proceedings have been filed with or submitted to the appropriate asbestos trusts is dispositive of the defendant's motion for an order to stay the proceedings. Alternatively, the defendant may withdraw the motion brought under subsection A of this section; or

2. File with the court a response to the defendant's motion for an order to stay the proceedings requesting a determination by the court that the information supporting the asbestos trust claims against the asbestos trusts identified in the defendant's motion for an order to stay the proceedings should be modified prior to the filing of an asbestos trust claim with, or the submission of an asbestos trust claim to, an asbestos trust or that there is insufficient information to file or submit the asbestos trust claim

identified in the defendant's motion for an order to stay the proceedings.

C. If the defendant has not met its burden under subsection A of this section and if the claimant files a response pursuant to paragraph 2 of subsection B of this section, the court shall determine if a successful asbestos trust claim could be submitted in good faith to each asbestos trust identified in the defendant's motion for an order to stay the proceedings brought under subsection A of this section. The claimant has the burden of proof, by a preponderance of the evidence, to demonstrate that the information set forth by the defendant pursuant to paragraphs 2 and 3 of subsection A of this section should be modified prior to the filing of an asbestos trust claim with, or the submission of an asbestos trust claim to, each asbestos trust identified in the defendant's motion or that the asbestos trust claim should not be filed with or submitted to the asbestos trust because a successful asbestos trust claim cannot be made in good faith.

D. If the court determines that there is a good faith basis for filing an asbestos trust claim with, or submitting an asbestos trust claim to, an asbestos trust identified in the defendant's motion for an order to stay the proceedings brought under subsection A of this section, the court shall stay the proceedings until the claimant files the asbestos trust claims with or submits them to the asbestos trusts identified in the defendant's motion for an order to stay the

proceedings and has otherwise met the obligations set forth in this section and Section 3 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. A noncancer asbestos trust claim and a cancer asbestos trust claim are based on distinct injuries caused by a person's exposure to asbestos. A noncancer asbestos trust claim that is subject to disclosure under Section 3 or 4 of this act or is identified in this section means the noncancer asbestos claim that is the subject of the asbestos tort action in which the defendant seeks discovery pursuant to this section and to Section 3 or 4 of this act. If a claimant previously filed a noncancer asbestos trust claim with, or submitted a noncancer asbestos trust claim to, an asbestos trust and subsequently filed an asbestos tort action based on a cancer asbestos claim, a cancer asbestos trust claim that is subject to disclosure under Section 3 or 4 of this act or is identified in this section means both the earlier filed noncancer asbestos trust claim and the cancer asbestos claim that is the subject of the subsequent asbestos tort action.

B. Asbestos trust claims and the information that is the subject of disclosure under Section 3 or 4 of this act are presumed to be authentic, relevant to, and discoverable in an asbestos tort action. Notwithstanding any agreement or confidentiality provision, trust

claims material are presumed to not be privileged. The parties in the asbestos tort action may introduce at trial any trust claims material to prove alternative causation for the exposed person's claimed injury, death, or loss to person, to prove a basis to allocate responsibility for the claimant's claimed injury, death, or loss to person, and to prove issues relevant to an adjudication of the asbestos claim, unless the exclusion of the trust claims material is otherwise required by the rules of evidence. An asbestos trust claim rejected by an asbestos trust may be excluded as evidence if the exclusion is required by the rules of evidence.

C. In addition to the disclosure requirements set forth in Sections 3 and 4 of this act, the parties to the asbestos tort action may seek additional disclosure and discovery of information relevant to the action by any mechanism provided by any applicable section of the Oklahoma Statutes, the Rules of Civil Procedure, any local rule, or any case management order. In addition to the disclosure described in this division, any defendant in the asbestos tort action also may seek discovery of the claimant's asbestos trust claims directly from the asbestos trusts involved.

D. In an asbestos tort action, upon the filing by a defendant or judgment debtor of an appropriate motion seeking sanctions or other relief, the court may impose any sanction provided by a law of this state, including, but not limited to, vacating a judgment rendered in an asbestos tort action for a claimant's failure to comply with

the disclosure requirements of this section and Section 3 or 4 of this act.

E. 1. If subsequent to obtaining a judgment in an asbestos tort action in this state a claimant files any additional asbestos trust claim with, or submits any additional asbestos trust claim to, an asbestos trust that was in existence at the time the claimant obtained that judgment, the trial court, upon the filing by a defendant or judgment debtor of an appropriate motion seeking sanctions or other relief, has jurisdiction to reopen its judgment in the asbestos tort action and do either of the following:

a. adjust the judgment by the amount of any subsequent asbestos trust payments obtained by the claimant; or

b. order any other relief to the parties that the court considers just and proper.

2. As used in this subsection, "asbestos trust" means and encompasses all trust entities, claims agents, or claims processing facilities that are created pursuant to the jurisdiction of a United States Bankruptcy Court and Section 524(g) of Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 524(g), or other applicable provision of law and that are formed for the purpose of compensating claimants asserting eligible asbestos claims.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 86 of Title 76, unless there is created a duplication in numbering, reads as follows:

This act shall apply to asbestos tort actions filed on or after the effective date of this act and to pending asbestos tort actions in which trial has not commenced as of the effective date of this act. This act shall apply to claims made against any asbestos trusts, without regard to whether those trusts were in existence on or created after the effective date of this act.

SECTION 7. This act shall become effective November 1, 2012.

Passed the Senate the 13th day of March, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2012.

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Presiding Officer of the House of Representatives