



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB0153

Introduced 1/14/2013, by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

735 ILCS 5/Art. II Pt. 23 heading new
735 ILCS 5/2-2301 new
735 ILCS 5/2-2305 new
735 ILCS 5/2-2310 new

Amends the Code of Civil Procedure. Provides that asbestos trust claims are presumed to be authentic, relevant to, and discoverable in an asbestos tort action, and that notwithstanding any agreement or confidentiality provision, trust claims material are presumed to be not privileged. Provides that within 30 days after the commencement of discovery in an asbestos tort action that is not otherwise barred or deferred under applicable law or within 30 days of the effective date of this Section with respect to an asbestos tort action that is pending on that effective date and in which discovery has commenced, 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. Provides that the statement shall disclose certain facts. Provides that the submission of the sworn statement 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. Contains requirements concerning updating of the sworn statement. Provides sanctions for noncompliance with the new provisions. Defines terms.

LRB098 03928 HEP 33947 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding
5 Part 23 to Article II as follows:

6 (735 ILCS 5/Art. II Pt. 23 heading new)

7 Part 23. Asbestos Tort Actions

8 (735 ILCS 5/2-2301 new)

9 Sec. 2-2301. Definitions. For purposes of this Part, the
10 terms listed have the following meanings:

11 "Asbestos tort action" means a tort action based on an
12 asbestos claim.

13 "Asbestos trust" means and encompasses all trust entities,
14 claims agents, or claims processing facilities that are: (i)
15 created pursuant to the jurisdiction of a United States
16 bankruptcy court and Section 524(g) of Chapter 11 of the United
17 States Bankruptcy Code (11 U.S.C. 524(g)), or other applicable
18 provision of law; (ii) formed for the purpose of compensating
19 claimants asserting eligible asbestos claims; and (iii) in
20 existence on the date initially set for trial in the asbestos
21 tort action.

22 "Asbestos trust claim" means a claim for compensation by an

1 exposed person or the exposed person's representative against
2 an asbestos trust.

3 "Claimant" means any person asserting an asbestos claim or
4 asbestos trust claim, including a plaintiff, counterclaimant,
5 cross-claimant, or third-party plaintiff.

6 (735 ILCS 5/2-2305 new)

7 Sec. 2-2305. Disclosure of asbestos trust claims.

8 (a) Within 30 days after the commencement of discovery in
9 an asbestos tort action that is not otherwise barred or
10 deferred under applicable law, or within 30 days of the
11 effective date of this Section with respect to an asbestos tort
12 action that is pending on that effective date and in which
13 discovery has commenced, a claimant shall provide to all of the
14 parties in the action a sworn statement by the claimant, under
15 penalty of perjury, identifying all existing asbestos trust
16 claims made by or on behalf of the claimant and all trust
17 claims material pertaining to each identified asbestos trust
18 claim. The sworn statement shall disclose the date on which
19 each asbestos trust claim against the relevant asbestos trust
20 was made and whether any request for a deferral, delay,
21 suspension, or tolling of the asbestos trust claims process has
22 been submitted.

23 (b) The submission of the sworn statement under subsection
24 (a) of this Section shall be in addition to any disclosure
25 requirements otherwise imposed by law, civil rule, court order

1 or ruling, applicable agreement or stipulation, local rule, or
2 case management order.

3 (c) If the claimant, subsequent to the submission of the
4 sworn statement under subsection (a) of this Section, files
5 with or submits to an asbestos trust an additional asbestos
6 trust claim not previously disclosed, the claimant shall
7 provide to all of the parties in the asbestos tort action an
8 amendment which updates the sworn statement and identifies the
9 additional asbestos trust claim. The claimant shall provide an
10 amendment required under this subsection (c) within 30 days of
11 filing or submitting an additional asbestos trust claim.

12 (d) With respect to an asbestos trust claim that a claimant
13 discloses under subsection (c) of this Section in an amendment
14 to the sworn statement, the claimant shall provide to all of
15 the parties in the asbestos tort action all trust claims
16 material pertaining to each additional asbestos trust claim
17 identified in the amendment. The claimant shall provide the
18 trust claims materials within 30 days of filing or submitting
19 each additional asbestos trust claim.

20 (e) Failure to provide to all of the parties in the
21 asbestos tort action all trust claims material in a timely
22 manner as required by this Section shall constitute grounds for
23 the court to decline to assign an initial trial date or extend
24 the date set for trial in the action.

25 (f) Nothing in this Section prevents a court of competent
26 jurisdiction from requiring any disclosures in addition to the

1 disclosures required under this Section. The parties to the
2 asbestos tort action may seek additional disclosure and
3 discovery of information relevant to the action by any
4 mechanism provided by any applicable Section of this Code, any
5 local rule, or any case management order.

6 (g) In addition to the disclosure required by this Section,
7 a defendant in an asbestos tort action may seek discovery of
8 the claimant's asbestos trust claims directly from involved
9 asbestos trusts.

10 (h) Asbestos trust claims are presumed to be authentic,
11 relevant to, and discoverable in an asbestos tort action.
12 Notwithstanding any agreement or confidentiality provision,
13 trust claims material are presumed to be not privileged.

14 (735 ILCS 5/2-2310 new)

15 Sec. 2-2310. Sanctions for nondisclosure.

16 (a) In an asbestos tort action, upon the success of a
17 motion by a defendant or judgment debtor seeking sanctions or
18 other relief, the court may impose any sanction provided by
19 law, including but not limited to vacating a judgment rendered
20 in an asbestos tort action for a claimant's failure to comply
21 with the disclosure requirements of Section 2-2305 of this
22 Code.

23 (b) If, subsequent to obtaining a judgment in an asbestos
24 tort action in this State, a claimant files or submits an
25 additional asbestos trust claim to an asbestos trust that was

1 in existence at the time the claimant obtained the judgment,
2 the trial court, upon the success of a motion by a defendant or
3 judgment debtor seeking sanctions or other relief, has
4 jurisdiction to reopen the asbestos tort action and do either
5 of the following:

6 (1) adjust the judgment by the amount of any subsequent
7 asbestos trust payments obtained by the claimant; or

8 (2) order any other relief to the parties that the
9 court considers just and proper.