**South Carolina General Assembly**

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**S. 399**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Campbell

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Introduced in the Senate on January 22, 2019

Currently residing in the Senate Committee on **Judiciary**

Summary: Asbestos Trust Claims Transparency Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/22/2019 Senate Introduced and read first time ([Senate Journal‑page 7](file:///h:\sj\20190122.docx))

1/22/2019 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 7](file:///h:\sj\20190122.docx))

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**VERSIONS OF THIS BILL**

[1/22/2019](file:///p:\pprever\2019-20\399_20190122.docx)

**A** **BILL**

TO ENACT THE “ASBESTOS TRUST CLAIMS TRANSPARENCY ACT”; TO AMEND TITLE 15 OF THE 1976 CODE, RELATING TO CIVIL REMEDIES AND PROCEDURES, BY ADDING CHAPTER 83, TO ESTABLISH THE REQUIRED DISCLOSURES BY PLAINTIFFS, TO ESTABLISH DISCOVERY PROVISIONS, TO ESTABLISH THAT A COURT MAY STAY AN ACTION, TO ESTABLISH THAT A DEFENDANT MAY IDENTIFY ADDITIONAL OR ALTERNATIVE ASBESTOS TRUSTS, TO ESTABLISH THE VALUATION OF ASBESTOS TRUST CLAIMS, TO ESTABLISH SETOFF PROVISIONS, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Asbestos Bankruptcy Trust Claims Transparency Act.”

SECTION 2. (A) The Legislature of the State of South Carolina finds that:

(1) over one hundred twenty 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 withheld in order to inflate recoveries in asbestos actions;

(7) the lack of transparency regarding trust claims information harms South Carolina employers, their employees, their shareholders, and the communities in which they operate. Companies that pay inflated settlements and awards in asbestos cases have fewer resources to pay future claimants and invest in the State’s economy; and

(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) It is the purpose of this act to:

(1) provide transparency with respect to asbestos trust claims and claims made in civil asbestos actions; and

(2) reduce the opportunity for withholding or suppression of trust‑related exposure evidence in asbestos actions.

SECTION 3. Title 15 of the 1976 Code is amended by adding:

“CHAPTER 83

Asbestos Bankruptcy Trust Claims Transparency Act

Section 15‑83‑10. For the purposes of this chapter:

(1) ‘Asbestos action’ means 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 a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person.

(2) ‘Asbestos trust’ means a government‑approved or court‑approved trust, qualified settlement fund, compensation fund, or claims facility, created as a result of an administrative or legal action, as a result of a court‑approved bankruptcy, or pursuant to 11 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other applicable provision of 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’ means 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 a 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’ means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization, for an asbestos trust.

Section 15‑83‑20. (A) Within thirty days after an asbestos action is filed, a plaintiff shall:

(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; and

(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) The plaintiff has a continuing duty to supplement the information and materials required under subsection (A)(1) within thirty 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.

Section 15‑83‑30. (A) Not less than sixty days before trial, if a defendant believes that the plaintiff has not filed all available asbestos trust claims as required under Section 15‑83‑20, then 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 that 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, then the court shall stay the action until the plaintiff files the trust claim and produces all related trust claim materials.

(C) An asbestos action may not be set for trial until at least sixty days after the plaintiff complies with this section.

Section 15‑83‑40. (A) In an asbestos action, trust claim materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence. A claim of privilege does not apply to trust claim materials or trust governance documents.

(B) A defendant in an asbestos action may seek discovery from an asbestos trust. A 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 information and materials sought by the defendant.

Section 15‑83‑50. In any asbestos action in which damages are awarded and setoffs are permitted under applicable law, a defendant is entitled to a setoff in the amount that 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 that the plaintiff will receive as specified in the asbestos trust governance documents. If multiple defendants are found liable for damages, then the court shall distribute the amount of setoff proportionally between the defendants, according to the liability of each defendant.”

SECTION 4. This act takes effect upon approval by the Governor.

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