**South Carolina General Assembly**

124th Session, 2021-2022

**S. 763**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Cromer

Document Path: l:\council\bills\rt\17948wab21.docx

Introduced in the Senate on April 22, 2021

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

Summary: Asbestos bankruptcy trust claims

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/22/2021 Senate Introduced and read first time ([Senate Journal‑page 7](file:///h:\sj\20210422.docx))

4/22/2021 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 7](file:///h:\sj\20210422.docx))

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**VERSIONS OF THIS BILL**

[4/22/2021](file:///p:\pprever\2021-22\763_20210422.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY AND CLAIMS LEGITIMACY ACT” BY ADDING CHAPTER 83 TO TITLE 15 SO AS TO ESTABLISH REQUIRED DISCLOSURES BY PLAINTIFFS IN ASBESTOS ACTIONS, TO ESTABLISH RELATED DISCOVERY PROVISIONS, TO ESTABLISH THAT COURTS MAY STAY SUCH ACTIONS, TO ESTABLISH THAT DEFENDANTS IN SUCH ACTIONS MAY IDENTIFY ADDITIONAL OR ALTERNATIVE ASBESTOS TRUSTS, TO ESTABLISH THE VALUATION OF ASBESTOS TRUST CLAIMS IN ASBESTOS ACTIONS, 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 and Claims Legitimacy Act”.

SECTION 2. Title 15 of the 1976 Code is amended by adding:

“CHAPTER 83

Asbestos Bankruptcy Trust Claims Transparency and Claims Legitimacy Act

Section 15‑83‑110. 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. Section 524(g) or 11 U.S.C. Section 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 15‑83‑120. (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;

(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; and

(3) provide the parties with a sworn statement specifying the evidence that provides the basis for each claim against each defendant. The sworn information form shall include all of the following with specificity:

(a) the name, address, date of birth, marital status, occupation, smoking history, current and past worksites, and current and past employers of the exposed individual, and any person by whom the exposed person was exposed to asbestos;

(b) each individual by whom the exposed individual was exposed to asbestos and the exposed individual’s relationship to each such individual;

(c) each asbestos‑containing product to which the individual was exposed and each physical location at which the individual was exposed to asbestos, or the other person was exposed if exposure was by another individual;

(d) the identity of the manufacturer or seller of the specific asbestos product for each exposure;

(e) the specific location and manner of each exposure, including for any individual by whom the exposed individual was exposed to asbestos;

(f) the beginning and ending dates of each exposure, the frequency and length of the exposures, and the proximity of the asbestos‑containing product or its use to the exposed person and any person by whom the exposed person was exposed to asbestos;

(g) the asbestos‑related disease claimed to exist; and

(h) any supporting documentation relating to the information required under this section.

(B) The plaintiff has a continuing duty to supplement the statements and materials required under subsection (A) within thirty days after the plaintiff files an additional trust claim, supplements an asbestos trust claim, receives additional information or materials related to an asbestos trust claim, or receives additional information that is required to be disclosed.

(C) The court, on motion by a defendant, shall dismiss the asbestos action without prejudice as to any defendant whose product or premises is not identified in the required disclosures set forth in subsection (A)(3).

(D) The court, on motion by a defendant, shall dismiss the asbestos action without prejudice if the claimant fails to comply with the requirements of Sections 15‑83‑110 to 15‑83‑150.

Section 15‑83‑130. (A) No 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 15‑83‑120, 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 15‑83‑140. (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 15‑83‑150. 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 3. This act takes effect upon approval by the Governor.

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