

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1582

INTRODUCER: Commerce and Tourism Committee and Senator Simmons

SUBJECT: Asbestos Trust Claims

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	<u>Elsesser</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1582 requires a claimant filing an asbestos injury lawsuit to notify all parties to the action of any claims made against and funds received from an asbestos trust. The bill provides that a defendant in an asbestos claim may obtain through discovery certain materials the claimant has filed with an asbestos trust. The bill bars asbestos claimants from claiming that the materials filed with the trust are privileged.

II. Present Situation:

In 2005, the Legislature passed the Asbestos and Silica Compensation Fairness Act (the Act), with the purpose of giving “priority to true victims of asbestos and silica, claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;” fully preserving “the rights of claimants who were exposed to asbestos or silica to pursue compensation if they become impaired in the future as a result of the exposure;” enhancing “the ability of the judicial system to supervise and control asbestos and silica litigation;” and conserving “the scarce resources of the defendants to allow compensation to cancer victims and others who are physically impaired by exposure to asbestos or silica while securing the right to similar compensation for those who may suffer physical impairment in the future.”¹ “These statements demonstrate that the Act is intended to reverse years of common law precedent ... holding that a diagnosis of asbestos-related disease and injury, without regard to any particular

¹ Section 774.202(1-4), F.S.

threshold level of impairment suffered, constitutes an accrued cause of action that provides citizens vested rights to file actions based on the injuries.”²

At least 56 trusts have been established on behalf of asbestos defendant companies that have declared bankruptcy, and the largest 26 trusts have paid at least \$10.9 billion on 2.4 million claims.³

Section 774.207(2), F.S., requires asbestos claimants to disclose the amounts of payments received from any collateral sources, which include payments from an asbestos trust. That section permits a court to setoff a jury award by the amount received from a collateral source.

Section 774.209(2)(b), F.S., states that the act does not affect the rights of any claimant who is entitled to file a claim against an asbestos trust.

Section 774.204, F.S., details the proof an injured claimant must present upon filing in order to establish a prima facie asbestos claim. That section requires evidence that a qualifying physician has taken an exposure history of the claimant, and the section details the physical medical findings the claimant must present to link his or her exposure to different ailments. This evidence differs for cancers of the lung, larynx, pharynx, or esophagus; cancers of the colon, rectum, or stomach; and for mesothelioma. “This requirement clearly serves the purpose of providing priority to plaintiffs who can demonstrate physical impairment caused by exposure to asbestos.”⁴ “Prior to the Act, the common law did not require any particular symptoms to constitute ‘manifestation’ in connection with asbestos injuries.”⁵ “[T]he main purpose of the Act is to alter the common law elements for an action arising from asbestos-related disease.”⁶

The Act bars punitive damage awards for asbestos claims.

III. Effect of Proposed Changes:

The bill governs the actions of plaintiffs who have filed an asbestos lawsuit and have filed or are preparing to file a separate claim against an asbestos trust. The bill states that, within 30 days after filing an asbestos claim⁷, a plaintiff must provide all parties with a sworn statement identifying all claims the plaintiff has made to an “asbestos trust.” The bill also requires a plaintiff to make such a disclosure within 30 days if he or she files an additional trust claim, supplements an existing claim, or receives additional information related to the trust claim.

The bill permits the asbestos defendant to seek discovery materials from an asbestos trust if a plaintiff has made a claim to that trust. These materials include proof that a plaintiff filed a claim with the trust and supplemental materials such as an affidavit, a deposition or trial testimony,

² *American Optical Corp. v. Spiewak*, 73 So. 3d 120, 130 (Fla. 2011).

³ Rand Institute for Civil Justice, *Bankruptcy Trusts, Asbestos Compensation, and the Courts* at 1, available at: https://www.rand.org/pubs/research_briefs/RB9603/index1.html (last visited February 17, 2020).

⁴ *In re Asbestos Litigation*, 933 So. 2d 613, 617 (Fla. 3d DCA 2006).

⁵ *Spiewak*, 73 So. 3d at 127.

⁶ *Id.*

⁷ The bill provides that “asbestos claim” has the same meaning as in s. 774.203, F.S. That section defines as asbestos claim as “a claim for damages or other civil or equitable relief presented in a civil action, arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any other derivative claim made by or on behalf of an exposed person or a representative, spouse, parent, child, or other relative of an exposed person.”

work history, an exposure allegation, medical records, documents showing the status of a claim against the trust, and any document related to the settlement of a trust claim. The bill bars an asbestos plaintiff from claiming that these materials are privileged and requires the plaintiff to provide consent to the trust to release the discovery materials. The bill states that the admissibility at trial of these materials is still subject to the Florida Evidence Code.

The bill allows a trial court to adjust an asbestos claim judgment to reflect payment received by the plaintiff from an asbestos trust, if the plaintiff filed the trust claim after he or she obtained a judgment but before that judgment was satisfied.

The bill contains a severability clause, providing that if any portion of the act is held invalid, the invalidity does not affect other provisions of the bill.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 774.301 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on February 18, 2020:

The CS removes the definition for “trust governance document,” a phrase that is not used in any substantive provision of the bill.

- B. Amendments:

None.