

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 755 Asbestos and Silica Claims

SPONSOR(S): Civil Justice Subcommittee, Fabricio

TIED BILLS: **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 5 N, As CS	Mathews	Jones
2) Judiciary Committee			

SUMMARY ANALYSIS

Asbestos is the name given to six naturally-occurring fibrous minerals resistant to chemical, thermal, and electricity damage historically used in construction, manufacturing, and fireproofing. When handled, asbestos separates into microscopic particles, exposure to which may cause cancer and other diseases, including lung cancer, mesothelioma, and asbestosis, which can take 20 to 40 years to develop following initial exposure.

Lawsuits against asbestos manufacturers and distributors began in the 1970s, and by the 1990s, these corporations began filing for reorganization under Chapter 11 of the United States Bankruptcy Code in the hopes of escaping their asbestos injury liability. In 1994, Congress enacted 11 U.S.C. s. 524(g) to create a comprehensive, statutory mechanism for addressing asbestos liabilities in bankruptcy reorganization proceedings.

Florida's Asbestos and Silica Compensation Fairness Act (Act) allows the filing of an asbestos lawsuit against a solvent defendant in the state if the claimant is domiciled in Florida or the asbestos exposure that substantially contributed to the exposed person's physical impairment occurred in the state. The statute of limitations to file an asbestos lawsuit does not begin to run until the exposed person discovers, or through exercising reasonable diligence should have discovered, his or her asbestos-related physical impairment.

CS/HB 755 adds extra requirements for a claimant seeking to recover damages for an asbestos or silica related injury under the Act. Specifically, the bill requires a claimant to file a sworn statement within 30 days of initiating a lawsuit alleging an asbestos or silica related injury. The bill requires the statement to include an extensive list of detailed information related to the exposure of the claimant to the asbestos or silica or, if the exposure was through another person, that person's exposure. However, the bill shields the information provided in the claimant's statement from being admissible at trial.

The bill is unlikely to have any fiscal impact on state or local governments and has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Asbestos

Asbestos is the commercial name given to six naturally-occurring fibrous minerals resistant to chemical, thermal, and electricity damage historically used in consumer goods including textiles, paper, toys, brake pads, shoes, and home appliances, and by the construction and ship-building industries as roofing, flooring, wallboard, insulation, and fireproofing.¹ When handled, asbestos separates into microscopic, circulating particles, exposure² to which may cause cancer and other diseases, including lung cancer, mesothelioma,³ and asbestosis,⁴ which can take 20 to 40 years to develop following initial exposure.⁵

As early as the 1930s, many asbestos industry executives knew of the occupational hazard asbestos exposure posed.⁶ However, given the prolonged latency period of asbestos-related diseases and that the average working-class American of the day would not expect to live past 60 years of age, the executives did not give the risks serious attention.⁷ Further, given the legal standards of the day,⁸ the executives had little reason to contemplate corporate liability for harms occurring decades into the future, and thus did not advertise what they knew.⁹

By 1970, however, published medical evidence conclusively showed that some workers exposed to asbestos would, over time, contract asbestosis, lung cancer, or mesothelioma and be increasingly disabled by these conditions.¹⁰ After 1973, asbestos use declined sharply as knowledge of the exposure risks spread and the new Occupational Safety and Health Administration (“OSHA”)¹¹ called for its removal. Despite the decline in use, a leading epidemiological study found that, by 1979, at least 27.5 million Americans had suffered asbestos exposure.¹²

Asbestos Litigation

¹ Centers for Disease Control and Prevention: National Institute for Occupational Safety and Health (NIOSH), *Asbestos*, <https://www.cdc.gov/niosh/topics/asbestos/default.html> (last visited Mar. 30, 2023).

² Asbestos exposure can be occupational or non-occupational. Non-occupational exposure includes domestic exposure, common in family members of a person occupationally exposed. See Nonhlanhla Tlotleng, et al., *The Significance of Non-Occupational Asbestos Exposure in Women with Mesothelioma*, *Respirology Case Reports*, Vol. 7 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6246071/> (last visited Mar. 30, 2023).

³ Mesothelioma is an aggressive cancer occurring in the thin tissue layer covering the majority of the internal organs, known as the mesothelium. Mesothelioma most often affects the tissue surrounding the lungs. See Mayo Clinic, *Mesothelioma*, <https://www.mayoclinic.org/diseases-conditions/mesothelioma/symptoms-causes/syc-20375022> (last visited Mar. 30, 2023).

⁴ Asbestosis is a chronic lung disease caused by inhaling asbestos fibers characterized by lung tissue scarring and shortness of breath. As asbestosis progresses, lung tissue scarring prevents lungs from contracting and expanding normally. See Mayo Clinic, *Asbestosis*, <https://www.mayoclinic.org/diseases-conditions/asbestosis/symptoms-causes/syc-20354637> (last visited Mar. 30, 2023).

⁵ CDC, *supra* note 1.

⁶ Paul D. Carrington, *Asbestos Lessons: The Unattended Consequences of Asbestos Litigation*, *The Review of Litigation*, Vol. 26 (2007), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2343&context=faculty_scholarship (last visited Mar. 30, 2023).

⁷ *Id.*

⁸ Tort law was not yet recognized as the primary means of discouraging management from consciously taking employee health and safety risks, and courts interpreted applicable statutes of limitation as starting to run when the harm occurred. It was only after 1960 that tort law began to predominantly govern the relationship between employees and corporations, and courts began to interpret statutes of limitation to start running only when the victim discovers the harm. *Id.*

⁹ Carrington, *supra* note 6.

¹⁰ *Id.*

¹¹ Congress created OSHA with the Occupational Safety and Health Act of 1970 to ensure safe working conditions for American workers by setting and enforcing workplace standards and providing training, outreach, education, and assistance. See United States Department of Labor, Occupational Safety and Health Administration, *About OSHA*, <https://www.osha.gov/aboutosha> (last visited Mar. 30, 2023).

¹² See Carrington, *supra* note 6, citing William Nicholson, et al., *Occupational Exposure to Asbestos: Population at Risk and Projected Mortality 1980-2030*, 3 Am. Jur. Indus. Med. 259 (1982).

In 1972, an insulation worker disabled by asbestosis and mesothelioma sued his employer, a building materials manufacturer, for failing to warn him of asbestos exposure risks.¹³ The evidence showed that the defendant knew of the risks but had not informed the claimant, and the jury awarded the claimant a \$68,000 verdict, finding the defendant strictly liable on the basis of s. 402A of the Restatement (Second) of Torts.¹⁴ The Fifth Circuit affirmed the trial court's opinion, finding that the defendant's failure to give "adequate warnings of the known or knowable dangers involved [in asbestos exposure]" made asbestos an "unreasonably dangerous" product.¹⁵

Asbestos Bankruptcy Trusts

In 1982, the Johns-Manville Corporation filed an asbestos-related bankruptcy petition, and five years later, the Manville Personal Injury Settlement Trust was the first asbestos bankruptcy trust established.¹⁶ A dramatic surge in asbestos manufacturing corporations filing for bankruptcy followed the creation of the Manville Trust, but bankruptcy courts lacked express statutory authority for the trust scheme.¹⁷ In 1994, Congress enacted 11 U.S.C. s. 524(g) to create a comprehensive, statutory mechanism for addressing asbestos liabilities in bankruptcy reorganization proceedings.¹⁸ This section authorizes bankruptcy courts to transfer a debtor corporation's asbestos liability to an independent trust funded by the reorganized company, allowing the reorganized company to operate free from present and future asbestos liability claims.¹⁹ Since 1994, over 60 such asbestos bankruptcy trusts have been established, paying over \$17.5 billion on millions of asbestos injury claims.²⁰

Generally, a claimant seeking compensation from an asbestos trust must file a claim form with an injury statement and information establishing asbestos exposure linked to the trust's predecessor.²¹ A claimant must also submit asbestos exposure evidence, such as employment and social security records, deposition testimony, and medical reports or records supporting a diagnosis of the specific disease claimed.²² A trust claim is then reviewed by a trust committee and paid when the claimant meets exposure requirements and suffers from an asbestos-related injury linked to such exposure.²³ Payment schedules established by each trust determine the amount of compensation a claimant will receive for a specific medical condition, and claimants may make claims from multiple trusts for a single injury as each trust operates independently.²⁴

Florida Asbestos Litigation Law

Initiating a Lawsuit

Florida's Asbestos and Silica Compensation Fairness Act²⁵ ("the Act") allows the filing of an asbestos lawsuit against a solvent defendant in the state if the claimant is domiciled in Florida²⁶ or the asbestos

¹³ *Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076 (5th Cir. 1973).

¹⁴ *Id.*; Restatement (Second) Of Torts § 402A (1965) ("One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer...").

¹⁵ *Borel*, *supra* note 13.

¹⁶ Lloyd Dixon, et al., *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts*, Rand Institute for Civil Justice, https://www.rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR872.pdf (last visited Mar. 30, 2023).

¹⁷ *Id.*

¹⁸ United States Department of Justice, Office of Public Affairs, *Justice Department Files Statement of Interest in New Asbestos Trust Proposal* (Sept. 13, 2018), <https://www.justice.gov/opa/pr/justice-department-files-statement-interest-new-asbestos-trust-proposal> (last visited Mar. 30, 2023).

¹⁹ See Dixon, *supra* note 21.

²⁰ *Id.*

²¹ Mark A. Behrens, *Asbestos Trust Transparency*, 81 Fordham L Rev. 107 (2018), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5540&context=flr> (last visited Mar. 30, 2023).

²² *Id.*

²³ See Dixon, *supra* note 21.

²⁴ *Id.*; See Behrens, *supra* note 25.

²⁵ Ch. 774, Part II, F.S.

²⁶ A person domiciled in Florida has his or her true, principal, and permanent home in this state. Such a person physically lives in the state, regards it as home, and intends to return even if currently residing elsewhere. See Legal Information Institute, *Domicile*, <https://www.law.cornell.edu/wex/domicile> (last visited Mar. 30, 2023).

exposure that substantially contributed to the exposed person's²⁷ physical impairment²⁸ occurred in the state.²⁹ The statute of limitations³⁰ to file an asbestos lawsuit does not begin to run until the exposed person discovers, or through exercising reasonable diligence should have discovered, his or her asbestos-related physical impairment.³¹ An asbestos lawsuit alleging a non-cancerous injury is a separate cause of action from an asbestos lawsuit alleging asbestos-related cancer, and settlement of a non-cancerous asbestos injury claim may not require as a condition of settlement the release of any future asbestos-related cancer claim, meaning that a claimant who sues for a non-cancerous injury may sue the same defendant again if he or she develops asbestos-related cancer in the future.³²

Discovery

A claimant bringing an asbestos lawsuit must include a written report and supporting test results with the complaint constituting prima facie evidence³³ of the exposed person's asbestos-related impairment.³⁴ The defendant has an opportunity to challenge the evidence's adequacy, and the court must dismiss the asbestos lawsuit without prejudice³⁵ if the claimant fails to make the required prima facie showing.³⁶ In addition to the written report, a claimant must file a sworn information form containing:

- The claimant's name, date of birth, and marital status;³⁷
- The name, address, date of birth, and marital status of each index person;³⁸
- The specific exposure locations;³⁹
- The alleged exposure's beginning and ending dates;⁴⁰
- The exposed person's occupation and employer name at the time of the alleged exposure;⁴¹
- The specific asbestos-related condition alleged;⁴² and
- Any supporting documentation related to the asbestos lawsuit.⁴³

A claimant is not currently required to file a sworn statement or other information form identifying the asbestos trust claims he or she filed or to indicate that he or she investigated all asbestos trust claims to determine his or her claim eligibility.⁴⁴

Effect of Proposed Changes

CS/HB 755 amends s. 774.205, F.S., to require a claimant to file a sworn statement within 30 days after filing an asbestos lawsuit. The sworn statement must specify the evidence that provides the basis for

²⁷ "Exposed person" means a person whose asbestos exposure is the basis for an asbestos lawsuit or trust claim. S. 774.203(13), F.S.

²⁸ Physical impairment, to which asbestos exposure was a substantial contributing factor, is an essential element of an asbestos lawsuit. A prima facie showing of physical impairment must include evidence verifying that a qualified physician took the exposed person's detailed occupational and exposure history, including identification of all of the exposed person's principal employment places and exposures to airborne contaminants, and a detailed medical and smoking history, including a thorough review of the exposed person's past and present medical problems and their most likely cause. S. 774.204(2)(a) and (b), F.S.

²⁹ S. 774.205(1), F.S.

³⁰ A statute of limitations bars the filing of a civil or criminal cause of action after a certain period of time following an injury or offense. See Legal Information Institute, *Statute of Limitations*, https://www.law.cornell.edu/wex/statute_of_limitations (last visited Mar. 30, 2023).

³¹ S. 774.206(1), F.S.

³² S. 774.206(2), F.S.

³³ Prima facie evidence is evidence sufficient to establish a fact or raise a presumption unless disproved or rebutted. See Legal Information Institute, *Prima Facie*, https://www.law.cornell.edu/wex/prima_facie (last visited Mar. 30, 2023).

³⁴ S. 774.205(2), F.S.

³⁵ When a case is dismissed without prejudice, the plaintiff is free to file another lawsuit based on the same grounds. See Legal Information Institute, *Dismissal Without Prejudice*, https://www.law.cornell.edu/wex/dismissal_without_prejudice (last visited Mar. 30, 2023).

³⁶ S. 774.205(1), F.S.

³⁷ S. 774.205(3)(a), F.S.

³⁸ An index person is the person by which a plaintiff claims asbestos exposure if alleging such exposure through another's testimony or by other than direct or bystander exposure to a product. S. 774.205(3)(b), F.S.

³⁹ S. 774.205(3)(c), F.S.

⁴⁰ S. 774.205(3)(d), F.S.

⁴¹ S. 774.205(3)(e), F.S.

⁴² S. 774.205(3)(f), F.S.

⁴³ S. 774.205(3)(g), F.S.

⁴⁴ See generally ch. 774, F.S.

each claim against each defendant. The bill requires a claimant to provide additional specific information and related discovery documents within 30 days of initiating a lawsuit. The claimant's sworn statement must include all of the following information:

- The name, address, date of birth, marital status, occupation, smoking history, current and past worksites, current and past employers of the exposed person, and any person through whom the exposed person alleges exposure to asbestos or silica.
- The name, address, and relationship to the exposed person for each person who is knowledgeable regarding the exposed person's exposures to asbestos or silica.
- The identity of the manufacturer or seller and specific name of each asbestos-containing product or silica-related product, including, but not limited to, all brand and trade names to which the exposed person was exposed.
- For each specific product identified, each site and the specific location at each site, including the address, where the exposed person was exposed to asbestos or silica.
- The beginning and ending dates of each exposure, the specific manner of each exposure, the frequency and length of time of each exposure, and the proximity of the product or its use to the exposed person.
- The specific condition related to asbestos or silica.
- Any supporting documentation relating to the information required.

The contents of the claimant's sworn statement are not admissible as evidence at trial.

As such, the bill significantly increases the requirements for a claimant to bring a lawsuit for an asbestos or silica related claim. Moreover, under the bill, the court, upon motion by a defendant, must dismiss the claim without prejudice as to any defendant whose product or premises is not specifically identified in the claimant's sworn statement. This will limit the ability of a claimant to include potential unknown defendants in his or her claim and will instead require a claimant to specifically name each possible defendant or company.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 774.205, F.S., relating to claimant proceedings.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a fiscal impact on the private sector by making it more difficult for an injured party to bring a claim against a defendant for an alleged asbestos or silica related injury. The bill requires the claimant to provide extensive and detailed information within 30 days of initiating the lawsuit, which may serve as a bar to litigation for some claimants.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 4, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removed the codification of the bare metal defense rule; and
- Clarified that the claimant's required statement is not admissible as evidence at trial.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.