

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 922, Page 2, Section 516.140, Line 13, by
2 inserting after all of said section and line the following:

3
4 "537.880. 1. The provisions of sections 537.880 to 537.890 shall apply to asbestos actions
5 filed on or after the effective date of such sections and to pending asbestos actions in which trial has
6 not commenced as of such date.

7 2. The provisions of sections 537.880 to 537.890 shall not apply to asbestos actions filed by
8 or on behalf for first responders. "First responder" shall be defined as any paid, volunteer, or retired
9 firefighter, paramedic, or emergency medical technician.

10 3. As used in sections 537.880 to 537.890, unless the context clearly requires otherwise, the
11 following words and terms shall mean:

12 (1) "Asbestos action", any claim for damages or other relief presented in a civil action
13 arising out of, based on, or related to the health effects of exposure to asbestos and any derivative
14 claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent,
15 child, or other relative of that person, but does not include a claim for compensatory benefits under
16 workers' compensation law or for veterans' benefits;

17 (2) "Asbestos trust", a government-approved or court-approved trust, qualified settlement
18 fund, compensation fund, or claims facility created as a result of an administrative or legal action or
19 a court-approved bankruptcy, or created under 11 U.S.C. Section 524(g), 11 U.S.C. Section 1121(a),
20 or other applicable provision of law, that is intended to provide compensation to claimants arising
21 out of, based on, or related to the health effects of exposure to asbestos;

22 (3) "Asbestos trust claim", any claim for compensation by an exposed person or the exposed
23 person's representative against any asbestos trust;

24 (4) "Claimant", any person bringing an asbestos action or asserting an asbestos trust claim,
25 including a personal representative if the asbestos action or asbestos trust claim is brought by an
26 estate, or a conservator or next friend if the asbestos action or asbestos trust claim is brought on
27 behalf of a minor or legally incapacitated individual. "Claimant" includes a claimant, counter-
28 claimant, cross-claimant, or third-party claimant;

29 (5) "Exposed person", any person whose exposure to asbestos or to asbestos-containing
30 products is the basis for an asbestos claim;

31 (6) "Trust claim materials", a final executed proof of claim and all documents and
32 information, including copies of electronic data and emails submitted to or received from an
33 asbestos trust by the claimant, including claim forms and supplementary materials; proofs of claim;
34 affidavits; depositions and trial testimony of the claimant and others knowledgeable about the
35 claimant's exposure history, work history, exposure allegations, and medical and health records; all
36 documents that reflect the status of a claim against an asbestos trust; and, if the claim has been

Action Taken _____ Date _____

1 settled, all documents relating to the settlement of the trust claim;

2 (7) "Trust governance document", all documents that relate to eligibility and payment levels,
3 including claims payment matrices, trust distribution procedures, or plans for reorganization for an
4 asbestos trust;

5 (8) "Veterans' benefits", a program for benefits in connection with military service
6 administered by the Veterans' Administration under 38 U.S.C. Title 38;

7 (9) "Workers' compensation", a program administered by the United States or a state to
8 provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases
9 or injuries or for disability or death caused by occupational diseases or injuries. "Workers'
10 compensation" includes the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Section
11 901 et seq., and the Federal Employees' Compensation Act, 5 U.S.C. Chapter 81. "Workers'
12 compensation" does not include the Federal Employers' Liability Act of April 22, 1908, 45 U.S.C.
13 Section 51 et seq.

14 537.882. 1. Within thirty days after an asbestos action is filed or within thirty days of the
15 effective date of this section for asbestos actions that are pending on that effective date, the claimant
16 shall:

17 (1) Provide the court and parties with a sworn statement signed by the claimant and
18 claimant's counsel indicating that an investigation has been conducted and that all asbestos trust
19 claims that can be made by the claimant or any person on the claimant's behalf have been completed
20 and filed. A deferral or placeholder claim that is missing necessary documentation for the trust to
21 pay the claim does not meet the requirements of this section. The sworn statement shall indicate
22 whether there has been a request to delay, suspend, toll, withdraw, or otherwise alter the standing of
23 any asbestos trust claim and provide the status and disposition of each asbestos trust claim;

24 (2) Provide all parties with all trust claim materials, including trust claim materials that
25 relate to conditions other than those that are the basis for the asbestos action and including all trust
26 claim materials from all law firms connected to the claimant in relation to exposure to asbestos.
27 Documents provided under this subsection shall include an affidavit from the claimant certifying
28 that the trust claim materials are true and complete;

29 (3) Produce all available trust claims filed by any individual other than the claimant if the
30 claimant's asbestos trust claim is based on exposure to asbestos through that other individual and the
31 materials are available to the claimant or claimant's counsel; and

32 (4) Provide the court and parties with a sworn statement signed by the claimant and
33 claimant's counsel specifying the evidence that provides the basis for each claim against each
34 defendant. The sworn information form shall include all of the following with specificity:

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

38 (b) Each individual through whom the exposed individual was exposed to asbestos and the
39 exposed individual's relationship to each such individual;

40 (c) Each asbestos-containing product to which the
41 individual, or the other person if exposure was through another person, was exposed to asbestos and
42 each physical location at which the individual was exposed to asbestos, or the other person was
43 exposed if exposure was through another individual;

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

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

48 (f) The beginning and ending dates of each exposure, the frequency and length of the
49 exposures, and the proximity of the asbestos-containing product or its use to the exposed person and

1 any person through whom the exposed person was exposed to asbestos;

2 (g) The asbestos-related disease claimed to exist; and

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

4 2. The claimant shall have a continuing duty to supplement the statement and materials
5 required to be provided under subsection 1 of this section within thirty days after the claimant files
6 an additional asbestos trust claim, supplements an existing asbestos trust claim, receives additional
7 trust claim materials related to any asbestos trust claim made against an asbestos trust, files an
8 amended complaint, or receives additional information that is required to be disclosed under
9 subdivision (4) of subsection 1 of this section.

10 3. The court, on motion by a defendant, shall dismiss the asbestos action without prejudice
11 as to any defendant whose product or premises is not identified in the required disclosures set forth
12 under subdivision (4) of subsection 1 of this section.

13 4. The court, on motion by a defendant, shall dismiss the asbestos action without prejudice
14 if the claimant fails to comply with the requirements of sections 537.880 to 537.890.

15 537.884. 1. No less than sixty days before the date the trial in an asbestos action is set to
16 commence, if the defendant believes the claimant has not filed all asbestos trust claims as required
17 by section 537.882, the defendant may move the court for an order to require the claimant to file
18 additional trust claims. The motion shall identify the asbestos trust claims the defendant believes
19 the claimant is eligible to file and include information supporting those asbestos trust claims.

20 2. Within ten days after the filing of the defendant's motion, the claimant shall:

21 (1) File the asbestos trust claims and produce all related trust claim materials; or

22 (2) File a written response with the court stating why there is insufficient evidence for the
23 claimant to file the asbestos trust claims.

24 3. Within ten days of the claimant filing a written response to the defendant's motion, the
25 court shall determine whether there is a sufficient basis for the claimant to file the asbestos trust
26 claim identified in the defendant's motion.

27 4. If the court determines that there is a sufficient basis for the claimant to file an asbestos
28 trust claim identified in the defendant's motion, the court shall order the claimant to file the asbestos
29 trust claim and produce all related trust claim materials within ten days. If the claimant does not
30 comply with the court's order, the asbestos action shall not proceed to trial until at least ninety days
31 after the claimant complies with the court's order.

32 537.886. 1. Trust claim materials and trust governance documents are presumed to be
33 relevant and authentic and are admissible in evidence in an asbestos action. No claims of privilege
34 apply to trust claim materials or trust governance documents.

35 2. A defendant in an asbestos action may seek discovery against an asbestos trust. The
36 claimant shall not claim privilege or confidentiality to bar discovery. The claimant shall provide
37 consent or any other expression of permission that may be required by the asbestos trust to release
38 information and materials sought by the defendant.

39 3. Trust claim materials that are sufficient to entitle a claim to consideration for payment
40 under the applicable trust governance documents may be sufficient to support a jury finding that the
41 claimant was exposed to products for which the trust was established to provide compensation and
42 that such exposure was a substantial contributing factor in causing the claimant's injury that is at
43 issue in the asbestos action.

44 4. The parties in the asbestos action may introduce at trial any trust claim materials or trust
45 governance documents to prove, without limitation, alternative causation for the exposed person's
46 claimed injury, death, or loss to person; to prove that the bankrupt entity is a joint-tortfeasor, liable
47 for the same injury or wrongful death for the purposes of section 537.060; or to prove issues
48 relevant to an adjudication of the asbestos claim, unless the exclusion of the trust claim material is
49 otherwise required by the rules of evidence. The jury shall not be informed of the specific amount

1 of consideration paid by a trust to a claimant in settlement of a claim.

2 537.888. 1. If a claimant proceeds to trial in an asbestos action before an asbestos trust
3 claim is resolved, there is a rebuttable presumption that the claimant is entitled to, and will receive,
4 the compensation specified in the trust governance documents applicable to his or her claim at the
5 time of trial. The court shall take judicial notice that the trust governance documents specify
6 compensation amounts and payment percentages and shall establish an attributed value to the
7 claimant's asbestos trust claims.

8 2. In an asbestos action in which damages are awarded and setoffs are permitted, a
9 defendant is entitled to a setoff or credit in the amount the claimant has received from asbestos trusts
10 and the amount of the valuation established under subsection 1 of this section. If multiple
11 defendants are found liable for damages, the court shall distribute the amount of setoff or credit
12 proportionally between the defendants according to the liability of each defendant.

13 3. In an asbestos action in which damages are awarded and a setoff is applied, the setoff or
14 credit for an asbestos trust claim that has been resolved shall be the amount of the actual payment
15 received by the claimant from the asbestos trust after application of any applicable payment
16 percentages.

17 537.890. 1. If, subsequent to obtaining a judgment in an asbestos action, a claimant files
18 any additional asbestos trust claim with, or submits any additional asbestos trust claim to, an
19 asbestos trust that was in existence at the time the claimant obtained judgment, the trial court, upon
20 the filing of a motion by a defendant or judgment debtor, has jurisdiction and shall reopen the
21 judgment in the asbestos action and adjust the judgment by the amount of any subsequent asbestos
22 trust payments obtained by the claimant and order any other relief that the court considers just and
23 proper.

24 2. A defendant or judgment debtor shall file any motion under this section within a
25 reasonable time and no more than three years after the judgment was entered or taken."; and
26

27 Further amend said bill by amending the title, enacting clause, and intersectional references
28 accordingly.