

HOUSE BILL No. 1400

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3-11-1; IC 34-6-2; IC 34-20-3-2; IC 34-31.

Synopsis: Asbestos litigation. Provides special proceedings for asbestos claims. Requires a plaintiff who files a personal injury action involving an asbestos claim to provide information to all parties in the action regarding each asbestos claim the plaintiff has filed or anticipates filing against an asbestos trust. Provides that if a defendant identifies an asbestos trust not named by the plaintiff, the court shall determine whether to require the plaintiff to file a claim against the asbestos trust and to stay the immediate action.

Effective: July 1, 2015.

Washburne

January 14, 2015, read first time and referred to Committee on Judiciary.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1400

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-3-11-1, AS AMENDED BY P.L.3-2008,
2 SECTION 157, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) There is created a special
4 fund known as the residual asbestos injury fund (referred to as "the
5 fund" in this chapter) for the purpose of providing compensation to
6 employees who become totally and permanently disabled from an
7 exposure to asbestos while in employment within Indiana and who are
8 eligible for benefits under section 3 of this chapter (expired August 1,
9 2007, and repealed) and not eligible for benefits under IC 22-3-7. The
10 fund shall be administered by the worker's compensation board
11 (referred to as "the board" in this chapter).

12 (b) The fund is not a part of the general fund. Money in the fund at
13 the end of a particular fiscal year and interest accruing from the
14 investment of the money does not revert to the state general fund. The
15 fund shall be used only for the payment of awards of compensation and



1 expense of medical examinations made and ordered by the board and
 2 chargeable against the fund under this section and shall be paid for that
 3 purpose by the treasurer of state upon award or order of the board.

4 **(c) A claim filed under this chapter must meet the requirements**
 5 **set forth in IC 34-31-27.5.**

6 SECTION 2. IC 34-6-2-11.5, AS ADDED BY P.L.134-2009,
 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2015]: Sec. 11.5. **(a) "Asbestos claim", for purposes of**
 9 **IC 34-31-8, has the meaning set forth in IC 34-31-8-1.**

10 **(b) "Asbestos claim", for purposes of IC 34-31-27.5, has the**
 11 **meaning set forth in IC 34-31-27.5-1.**

12 SECTION 3. IC 34-6-2-11.6 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 2015]: Sec. 11.6. **"Asbestos trust", for purposes of IC 34-31-27.5,**
 15 **has the meaning set forth in IC 34-31-27.5-2.**

16 SECTION 4. IC 34-6-2-11.7 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2015]: Sec. 11.7. **"Asbestos trust claims materials", for purposes**
 19 **of IC 34-31-27.5, has the meaning set forth in IC 34-31-27.5-3.**

20 SECTION 5. IC 34-6-2-11.8 IS ADDED TO THE INDIANA CODE
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 2015]: Sec. 11.8. **"Asbestos trust governance document", for**
 23 **purposes of IC 34-31-27.5, has the meaning set forth in**
 24 **IC 34-31-27.5-4.**

25 SECTION 6. IC 34-20-3-2 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) A product
 27 liability action that is based on:

- 28 (1) property damage resulting from asbestos; or
 29 (2) personal injury, disability, disease, or death resulting from
 30 exposure to asbestos;

31 must be commenced within two (2) years after the cause of action
 32 accrues. The subsequent development of an additional asbestos related
 33 disease or injury is a new injury and is a separate cause of action.

34 (b) A product liability action for personal injury, disability, disease,
 35 or death resulting from exposure to asbestos accrues on the date when
 36 the injured person knows that the person has an asbestos related
 37 disease or injury.

38 (c) A product liability action for property damage accrues on the
 39 date when the injured person knows that the property damage has
 40 resulted from asbestos.

41 (d) This section applies only to product liability actions against:

- 42 (1) persons who mined and sold commercial asbestos; and



1 (2) funds that have, as a result of bankruptcy proceedings or to
 2 avoid bankruptcy proceedings, been created for the payment of
 3 asbestos related disease claims or asbestos related property
 4 damage claims.

5 (e) For the purposes of IC 1-1-1-8, if any part of this section is held
 6 invalid, the entire section is void.

7 (f) Except for the cause of action expressly recognized in this
 8 section, this section does not otherwise modify the limitation of action
 9 or repose period contained in section 1 of this chapter.

10 **(g) A claim filed under this chapter must meet the requirements**
 11 **set forth in IC 34-31-27.5.**

12 SECTION 7. IC 34-31-8-8, AS ADDED BY P.L.134-2009,
 13 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2015]: Sec. 8. (a) Subject to subsections (c) and (d) and
 15 sections 10 and 12 of this chapter, the cumulative successor asbestos
 16 related liabilities of an innocent successor corporation are limited to the
 17 fair market value of the total gross assets of the transferor corporation,
 18 determined as of the time of the merger or consolidation through which
 19 the innocent successor corporation assumed or incurred successor
 20 asbestos related liability.

21 (b) An innocent successor corporation is not responsible for
 22 successor asbestos related liability in excess of the limitation set forth
 23 in subsection (a).

24 (c) For purposes of this section, if a transferor corporation assumed
 25 or incurred successor asbestos related liability in connection with a
 26 merger or consolidation with a prior transferor corporation, the fair
 27 market value of the total gross assets of the prior transferor corporation
 28 determined as of the time of the earlier merger or consolidation shall
 29 be substituted for the limitation set forth in subsection (a) to determine
 30 the limitation of liability of the innocent successor corporation.

31 (d) Cumulative successor asbestos related liabilities include
 32 liabilities that exist after the merger or consolidation of the innocent
 33 successor corporation and the transferor corporation and that are paid
 34 or discharged by or on behalf of the:

35 (1) innocent successor corporation; or

36 (2) transferor corporation;

37 as part of a settlement or judgment in Indiana or another jurisdiction.

38 **(e) A claim filed under this chapter must meet the requirements**
 39 **set forth in IC 34-31-27.5.**

40 SECTION 8. IC 34-31-27.5 IS ADDED TO THE INDIANA CODE
 41 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2015]:



Chapter 27.5. Special Proceedings: Asbestos Claims

Sec. 1. As used in this chapter, "asbestos claim" means any claim for damages, punitive damages, losses, indemnification, contribution, restitution, or other relief concerning asbestos, including:

(1) a claim relating to the health effects of exposure to asbestos, including:

- (A) personal injury;**
- (B) death;**
- (C) mental injury;**
- (D) emotional injury;**
- (E) risk or fear of disease or other injury;**
- (F) loss of:

 - (i) consortium;**
 - (ii) society;**
 - (iii) companionship; or**
 - (iv) support; and****
- (G) the costs of medical monitoring or surveillance;**

(2) a claim made by or on behalf of any person exposed to asbestos, including a claim of:

- (A) a representative;**
- (B) a spouse;**
- (C) a parent;**
- (D) a child; or**
- (E) another relative;**

of a person exposed to asbestos; or

(3) a claim for damage or loss caused by the:

- (A) installation;**
- (B) presence; or**
- (C) removal;**

of asbestos.

Sec. 2. As used in this chapter, "asbestos trust" means a trust, qualified settlement fund, compensation fund, or claims facility created:

(1) as a result of:

- (A) an administrative or legal action;**
- (B) bankruptcy;**
- (C) an agreement; or**
- (D) another settlement; or**

(2) under:

- (A) 11 U.S.C. 524(g); or**
- (B) other applicable provisions of law;**



1 that is intended to provide compensation as a result of harm from
 2 exposure to asbestos containing products or asbestos fibers, and
 3 asbestos personal injury claims filed in a state or federal court in
 4 Indiana.

5 **Sec. 3.** As used in this chapter, "asbestos trust claims materials"
 6 means all documents and information relevant or related to a
 7 pending claim or potential claim against an asbestos trust,
 8 including:

- 9 (1) forms and supplementary materials;
- 10 (2) proofs of claim;
- 11 (3) affidavits;
- 12 (4) depositions;
- 13 (5) trial testimony;
- 14 (6) work history; and
- 15 (7) medical and health records.

16 **Sec. 4.** As used in this chapter, "asbestos trust governance
 17 document" means any document that determines eligibility and
 18 payment levels, including:

- 19 (1) claims payment matrices;
- 20 (2) trust distribution procedures; or
- 21 (3) plans for reorganization;

22 for an asbestos trust.

23 **Sec. 5. (a)** Within sixty (60) days after a plaintiff files an initial
 24 complaint in a civil personal injury action involving an asbestos
 25 claim, the plaintiff shall provide to all parties in the action a sworn
 26 statement identifying each asbestos claim the plaintiff:

- 27 (1) has filed; and
- 28 (2) anticipates filing;

29 against an asbestos trust.

30 (b) The statement described in subsection (a) must include:

- 31 (1) the name, address, and contact information for the
 32 asbestos trust;
- 33 (2) the amount claimed by the plaintiff;
- 34 (3) the date the plaintiff filed the claim or application;
- 35 (4) the disposition of the claim; and
- 36 (5) whether there has been a request to delay, defer, suspend,
 37 or toll the claim or application with or against the asbestos
 38 trust.

39 **Sec. 6.** Within seventy-five (75) days after a plaintiff files an
 40 initial complaint in a civil personal injury action involving an
 41 asbestos claim, the plaintiff shall provide to all the parties in the
 42 action all the following:



1 (1) For each claim or application a plaintiff has filed with or
2 against an asbestos trust:

3 (A) a copy of the final executed proof of claim or
4 application; and

5 (B) all trust documents, including:

6 (i) trust claims materials;

7 (ii) trust governance documents;

8 (iii) any documents reflecting the current status of the
9 claim; and

10 (iv) if the claim is settled, all documents relating to the
11 claim.

12 (2) A list of each claim or application the plaintiff reasonably
13 anticipates filing with or against an asbestos trust, including:

14 (A) the name, address, and contact information for the
15 asbestos trust; and

16 (B) the amount claimed by the plaintiff.

17 Sec. 7. The plaintiff shall supplement the information and
18 materials the plaintiff provides under sections 5 and 6 of this
19 chapter within thirty (30) days after the plaintiff:

20 (1) files an additional claim; and

21 (2) receives additional information or documents related to
22 any claim or application the plaintiff files with or against an
23 asbestos trust, including additional information or documents
24 related to any claim or application the plaintiff reasonably
25 anticipates filing with or against an asbestos trust.

26 Sec. 8. (a) Trust claims materials and trust governance
27 documents are admissible in evidence at all stages of an asbestos
28 claim under this chapter.

29 (b) No claim or privilege applies to trust claims materials or
30 trust governance documents.

31 (c) A defendant in an asbestos claim may seek discovery against
32 an asbestos trust identified under this chapter.

33 (d) The plaintiff in an asbestos claim:

34 (1) may not claim privilege or confidentiality to bar discovery;
35 or

36 (2) shall provide consent and permission that may be required
37 by an asbestos trust to release information and materials
38 sought by a defendant.

39 Sec. 9. (a) If a defendant identifies an asbestos trust not named
40 by the plaintiff against which the defendant reasonably believes the
41 plaintiff should file a claim, upon a motion by the defendant, the
42 court shall determine whether to order the plaintiff to file a claim



1 against the asbestos trust. The defendant shall provide all
2 documents the defendant possesses or is aware of in support of the
3 motion.

4 (b) The court shall establish a deadline for filing a motion under
5 subsection (a). The court shall ensure the deadline established
6 affords the parties an adequate opportunity to investigate the
7 defendant's claims.

8 (c) If the court orders the plaintiff to file a claim or application
9 with the asbestos trust, the court shall stay the immediate action
10 until the plaintiff:

11 (1) swears or affirms that the plaintiff has filed the claim or
12 application; and

13 (2) provides to the court and to all the parties in the action
14 proof of the claim or application.

15 (d) The court may allow time for discovery or may stay the
16 proceeding for other good cause.

17 (e) Not less than thirty (30) days before trial, the court shall
18 enter into the record, a trust claims document that identifies each
19 claim or application the plaintiff has made with or against an
20 asbestos trust.

21 **Sec. 10. (a) Asbestos trust claims materials that are sufficient to**
22 **entitle a plaintiff's claim to be considered for payment under the**
23 **applicable trust governance documents constitute prima facie**
24 **evidence that the products associated with that asbestos trust**
25 **caused or contributed to cause the plaintiff's alleged injuries.**

26 (b) An asbestos trust described in subsection (a), including a
27 corporation, organization, or other entity associated with the
28 asbestos trust, is considered a nonparty (as defined in
29 IC 34-6-2-88), and the jury shall be instructed to apportion fault
30 among all the parties and nonparties in the action in accordance
31 with IC 34-51-2.

32 **Sec. 11. A plaintiff who fails to timely provide all the**
33 **information required under this chapter is subject to sanctions.**

