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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1428 Session of  
2015

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INTRODUCED BY KAMPF, TURZAI, CUTLER, MUSTIO, DIAMOND, MILLARD,  
TOPPER, KAUFFMAN, ZIMMERMAN, PHILLIPS-HILL, SCHEMEL, CORBIN,  
WHEELAND, BARRAR, DELOZIER, SAYLOR, GODSHALL, A. HARRIS,  
TOEPEL, ROSS AND TRUITT, JUNE 30, 2015

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 30, 2015

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AN ACT

1 Providing for transparency of claims made against asbestos-  
2 related bankruptcy trusts, for compensation and allocation of  
3 responsibility, for the preservation of resources and for the  
4 imposition of liabilities.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Fairness in  
9 Claims and Transparency (FaCT) Act.

10 Section 2. Purpose.

11 The purposes of this act are:

12 (1) To provide transparency of claims made against  
13 bankruptcy trusts and in the tort system.

14 (2) To facilitate fair and appropriate compensation to  
15 plaintiffs with a rational allocation of responsibility to  
16 all persons, whether current defendants or not, consistent  
17 with existing State law.

18 (3) To preserve the resources of defendants involved in

1 tort claims and bankruptcy trusts to help promote adequate  
2 recoveries for deserving plaintiffs.

3 (4) To ensure that liabilities properly borne by  
4 bankruptcy trusts are not imposed upon defendants in the tort  
5 system.

6 Section 3. Definitions.

7 The following words and phrases when used in this act shall  
8 have the meanings given to them in this section unless the  
9 context clearly indicates otherwise:

10 "Apportionment nonparty." An entity, regardless of solvency,  
11 which establishes or has established an asbestos trust against  
12 which the plaintiff has filed a claim or has a reasonable basis  
13 for filing a claim.

14 "Asbestos action." Any civil lawsuit in which the plaintiff  
15 seeks damages for an asbestos-related injury.

16 "Asbestos trust." Any trust or claims facility created or in  
17 the process of being created as a result of bankruptcies or  
18 other settlements that are intended to provide compensation to  
19 plaintiffs alleging asbestos-related injuries, including trusts  
20 created under 11 U.S.C. § 524(g) (relating to effect of  
21 discharge).

22 "Defendant." Any party to an asbestos action other than a  
23 plaintiff, an apportionment nonparty or an asbestos trust.

24 "Plaintiff." Any of the following:

25 (1) An individual filing an asbestos action on the  
26 individual's behalf.

27 (2) A person permitted by law to represent an individual  
28 filing an asbestos action during the individual's lifetime or  
29 as the legal representative of the estate of an individual  
30 claiming injury from asbestos during the individual's

1 lifetime.

2 "Settlement credit." The amount paid by an apportionment  
3 nonparty through an asbestos trust in excess of the asbestos  
4 trust's apportioned liability at trial.

5 Section 4. Apportionment of responsibility.

6 (a) General rule.--An apportionment nonparty shall be  
7 apportioned responsibility, for liability purposes, in an  
8 asbestos action pursuant to 42 Pa.C.S. § 7102(a.2) (relating to  
9 comparative negligence) and this section.

10 (b) Designation of apportionment nonparty.--A defendant in  
11 an asbestos action may, at any time, move to designate an  
12 asbestos trust as an apportionment nonparty. If the court  
13 determines by a preponderance of the evidence that the plaintiff  
14 has filed or has a reasonable basis for filing a claim with the  
15 asbestos trust, the court shall make the designation and  
16 liability shall be apportioned pursuant to 42 Pa.C.S. §  
17 7102(a.2) and this section.

18 (c) Settlement credits.--

19 (1) If liability is apportioned in an asbestos action  
20 among defendants and apportionment nonparties, the court  
21 shall calculate the amount of any settlement credits and mold  
22 the verdict to reflect all appropriate credits.

23 (2) Each apportionment nonparty that has compensated a  
24 plaintiff for more than its apportioned share of the verdict  
25 shall be awarded a settlement credit, and the damages awarded  
26 to the plaintiff shall be reduced by the amount of each  
27 settlement credit.

28 (3) Each apportionment nonparty that has compensated a  
29 plaintiff for less than its apportioned share of the verdict  
30 shall not be awarded a settlement credit.

1 (4) If an asbestos action proceeds to verdict before the  
2 plaintiff has received a final decision as to payment of the  
3 plaintiff's claim from an apportionment nonparty, there shall  
4 be a rebuttable presumption that the plaintiff will receive  
5 the maximum possible value of the claim available for the  
6 plaintiff's asbestos-related injury, as published in the  
7 applicable trust governance documents. If a verdict in favor  
8 of the plaintiff is entered, the court shall establish for  
9 each pending apportionment nonparty claim the maximum  
10 possible value as set forth in the trust governance  
11 documents, which value, when applicable, shall be used for  
12 purposes of calculating settlement credit.

13 (5) An apportionment of settlement credits provided for  
14 under this section shall be governed by this section and 42  
15 Pa.C.S. § 7102 and shall not be subject to the limitations of  
16 42 Pa.C.S. § 8326 (relating to effect of release as to other  
17 tort-feasors).

18 Section 5. Disclosure of information from asbestos trusts.

19 (a) File.--Not later than 90 days prior to trial of an  
20 asbestos action, or at another time as ordered by the court,  
21 whichever is earlier, a plaintiff shall file with the court and  
22 serve on all parties:

23 (1) a statement listing all existing or potential claims  
24 the plaintiff has filed or has a reasonable basis to file  
25 against any asbestos trust; and

26 (2) a statement listing all payments or funds the  
27 plaintiff has received or reasonably believes the plaintiff  
28 may be entitled to receive from each asbestos trust.

29 (b) Statement.--The statement provided under subsection (a)  
30 shall:

1           (1) be supported by a certification made subject to the  
2 penalties of 18 Pa.C.S. § 4904 (relating to unsworn  
3 falsification to authorities) from the plaintiff that the  
4 plaintiff has conducted a reasonable investigation and has  
5 disclosed all claims the plaintiff has filed or has a  
6 reasonable basis to file against an asbestos trust;

7           (2) disclose when each claim was or will be submitted to  
8 each asbestos trust and the status of each claim, including  
9 whether there has been a response from the asbestos trust and  
10 whether the plaintiff has requested deferral, delay or  
11 tolling of any aspect of the asbestos trust claims process;  
12 and

13           (3) disclose the amount of compensation, if any, the  
14 plaintiff has received or reasonably believes the plaintiff  
15 may receive from the asbestos trust along with a statement  
16 explaining any contingencies that may cause the amount of  
17 compensation to change in the future.

18       (c) Service.--When the plaintiff files and serves the  
19 statement required under subsection (a), the plaintiff shall  
20 serve on all parties to the asbestos action copies of the  
21 plaintiff's submissions to and communications with each asbestos  
22 trust identified, including copies of electronic data and e-  
23 mails, proof-of-claim forms and all other materials or  
24 information provided to the asbestos trust or received from the  
25 asbestos trust in relation to a claim, including all of the  
26 following:

27           (1) Work histories, exposure allegations, affidavits,  
28 depositions and trial testimony of the plaintiff and others  
29 knowledgeable about the plaintiff's exposure history.

30           (2) All medical documentation relating to the

1 plaintiff's claim, including, but not limited to, x-rays,  
2 test results, diagnostic reports, CT reports, cytology  
3 reports, all other medical reports and pathology results.

4 (3) The trust governance documents, including the  
5 payment amounts specified in the documents.

6 (d) Duty.--The plaintiff shall have a continuing duty, until  
7 final resolution of the action, to supplement the statement  
8 provided under subsection (a) and the production of materials  
9 under subsection (c), as follows:

10 (1) If the plaintiff learns that the statement filed  
11 under subsection (a) was incomplete or incorrect when filed,  
12 or although complete and correct when filed, is no longer  
13 complete and correct, the plaintiff shall file and serve a  
14 supplemental statement on all parties to an asbestos action.  
15 The supplemental statement must be filed and served within 30  
16 days after the plaintiff discovers the necessity for  
17 supplementation, or within the time as ordered by the court.

18 (2) If the plaintiff files or provides a claim form or  
19 other materials to an asbestos trust after the plaintiff's  
20 initial service of materials under subsection (c), the  
21 plaintiff must serve copies of the additional materials on  
22 all parties to the action. The supplemental materials must be  
23 served within 30 days after the plaintiff provides the  
24 materials to the asbestos trust.

25 (3) A plaintiff's asbestos action shall be stayed in its  
26 entirety until the plaintiff certifies that all existing or  
27 potential claims identified in the statement provided under  
28 subsection (a), as supplemented, have been filed and  
29 identified. Unless all defendants in an asbestos action  
30 consent, an asbestos action may not begin trial until at

1       least 30 days after a statement is supplemented under  
2       paragraph (1) or mandatory disclosures are supplemented under  
3       paragraph (2).

4       (e) Discovery.--A defendant in an asbestos action may seek  
5       discovery from an asbestos trust identified by the plaintiff in  
6       the plaintiff's statement under subsection (a), as supplemented.  
7       If a defendant seeks discovery from an asbestos trust, the  
8       plaintiff shall provide consent, a signed authorization and  
9       permission for the release of relevant information and  
10      materials, if required by the asbestos trust.

11      (f) Sanctions.--Failure by a plaintiff to comply with the  
12      disclosure and discovery requirements under this section shall  
13      be a basis for the imposition of sanctions.

14      Section 6. Effective date.

15      This act shall take effect in 90 days.