

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 1426: Asbestos Transparency Trust Act; create.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

16 **SECTION 1.** The following shall be codified as Section
17 11-67-1, Mississippi Code of 1972:

18 11-67-1. **Title.** This chapter may be cited as the "Asbestos
19 Bankruptcy Trust Claims Transparency Act."

20 **SECTION 2.** The following shall be codified as Section
21 11-67-3, Mississippi Code of 1972:

22 11-67-3. **Declaration of legislative intent.** (1) The
23 Legislature finds and determines that:

24 (a) Asbestos is a mineral that was widely used for
25 insulation, fireproofing, and other purposes;

26 (b) Exposure to asbestos has been causally associated
27 with mesothelioma and lung cancer, as well as nonmalignant
28 conditions such as asbestosis, pleural plaques, and diffuse
29 pleural thickening;

30 (c) Approximately one hundred (100) employers have
31 declared bankruptcy at least partially due to asbestos-related
32 liability;

33 (d) Over ten thousand (10,000) companies have been
34 named as asbestos defendants, including many small- and
35 medium-sized companies, in industries that cover eighty-five
36 percent (85%) of the United States economy;

37 (e) Scores of trusts have been established in
38 asbestos-related bankruptcy proceedings to form a multibillion
39 dollar asbestos bankruptcy trust compensation system outside of
40 the tort system, and new asbestos trusts continue to be
41 established;

42 (f) Asbestos plaintiffs often seek compensation both
43 from solvent defendants in civil actions and from trusts or claims
44 facilities formed in asbestos-related bankruptcy proceedings;

45 (g) There is limited coordination and transparency
46 between these two (2) paths to recovery, which has resulted in the
47 suppression of evidence in asbestos actions; and

48 (h) Justice is promoted by transparency with respect to
49 asbestos bankruptcy trust claims in civil asbestos actions.

50 (2) Now, therefore, it is the intent of the Legislature to:

51 (a) Provide transparency with respect to asbestos
52 bankruptcy trust claims in civil asbestos actions by creating a
53 substantive right for defendants to obtain bankruptcy trust
54 discovery;

55 (b) Reduce the opportunity for oversight or suppression
56 of evidence in asbestos actions; and

57 (c) Enhance the ability of courts to oversee and manage
58 asbestos cases.

59 **SECTION 3.** The following shall be codified as Section
60 11-67-5, Mississippi Code of 1972:

61 11-67-5. **Definitions.** The following words and phrases as
62 used in this chapter have the meaning ascribed to them in this
63 section, unless the context clearly requires otherwise:

64 (a) "Asbestos" includes, without limitation,
65 chrysotile, amosite, crocidolite, tremolite asbestos,
66 anthophyllite asbestos, actinolite asbestos, asbestiform winchite,
67 asbestiform richterite, asbestiform amphibole minerals, and any of
68 these minerals that have been chemically treated or altered,
69 including all minerals defined as asbestos in 29 CFR 1910 at the
70 time the asbestos action is filed.

71 (b) "Asbestos action" means a claim for damages or
72 other civil or equitable relief presented in a civil action by a
73 plaintiff arising out of, based on, or related to the health
74 effects of exposure to asbestos, including, but not limited to,
75 loss of consortium, wrongful death, mental or emotional injury.

76 (c) "Asbestos trust" means a government-approved or
77 court-approved trust, qualified settlement fund, compensation fund
78 or claims facility created as a result of an administrative or
79 legal action, a court-approved bankruptcy, or pursuant to 11

80 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other applicable provision
81 of law, that is intended to provide compensation to claimants
82 arising out of, based on, or related to the health effects of
83 exposure to asbestos.

84 (d) "Asbestos trust claim" includes, but is not limited
85 to, any claim or demand for compensation for asbestos-related
86 injuries from an asbestos trust.

87 (e) "Plaintiff" means the exposed person, deceased or
88 living, and the person bringing the asbestos action, including a
89 personal representative if the asbestos action is brought by an
90 estate, or a conservator or next friend if the asbestos action is
91 brought on behalf of a minor or legally incapacitated individual.

92 (f) "Trust materials" means a final executed proof of
93 claim and all other documents and information related to a claim
94 against an asbestos trust and any other information that the
95 plaintiff submits to the asbestos trust, including claims forms
96 and supplementary materials, affidavits, correspondence,
97 depositions and trial testimony, work history, medical and health
98 records, documents reflecting the status of a claim against an
99 asbestos trust, and, if the trust claim has settled, all documents
100 relating to the settlement of the trust claim.

101 (g) "Trust governance documents" means all documents
102 that relate to eligibility and payment levels, including, but not
103 limited to, claims payment matrices, trust distribution
104 procedures, or plans for reorganization, for an asbestos trust.

105 **SECTION 4.** The following shall be codified as Section
106 11-67-7, Mississippi Code of 1972:

107 11-67-7. **Required disclosures by the plaintiff.** (1) Within
108 thirty (30) days after an asbestos action is filed, or by August
109 1, 2017, whichever is later, the plaintiff shall do all of the
110 following:

111 (a) Provide the court and parties with a sworn
112 statement signed by the plaintiff, under penalties of perjury,
113 that all asbestos trust claims that can be made by the plaintiff
114 have been filed and that includes the following:

115 (i) A statement that an investigation of all
116 asbestos trust claims has been conducted;

117 (ii) A list identifying each asbestos trust claim
118 that has been filed by the plaintiff;

119 (iii) A list identifying each asbestos trust claim
120 that can be made by the plaintiff, which has not been filed for
121 the sole permissible reason that the cost of submitting an
122 asbestos trust claim exceeds the plaintiff's reasonably
123 anticipated recovery; and

124 (iv) Whether there has been a request to defer,
125 delay, suspend, toll, withdraw, or otherwise alter the standing of
126 any asbestos trust claim, and provide the status and disposition
127 of each asbestos trust claim.

128 (b) Provide all parties with all trust materials,
129 including trust materials that relate to conditions other than

130 those that are the basis for the asbestos action and including all
131 trust materials from all law firms connected to the plaintiff in
132 relation to exposure to asbestos, including anyone at a law firm
133 involved in the asbestos action, any referring law firm, and any
134 other firm that has filed an asbestos trust claim for the
135 plaintiff. Documents should be accompanied by a custodial
136 affidavit from the asbestos trust, certifying that the trust
137 materials submitted to defendants are true and complete.

138 (c) If the plaintiff's asbestos trust claim is based on
139 secondary exposure to asbestos through another individual or
140 individuals, the plaintiff shall produce all trust materials
141 submitted by the other individual or individuals to any asbestos
142 trusts if the materials are available to the plaintiff or the
143 plaintiff's counsel.

144 (2) The plaintiff has a continuing duty to supplement the
145 information and materials required under subsection (1) and the
146 supplementation shall be made no later than thirty (30) days after
147 the plaintiff supplements an existing asbestos trust claim,
148 receives additional information or materials related to an
149 asbestos trust claim, or files an additional asbestos trust claim.

150 (3) The court may dismiss the asbestos action if the
151 plaintiff fails to comply with this section.

152 (4) An asbestos action may not be set for trial until at
153 least one hundred eighty (180) days after the requirements of
154 subsection (1) are met.

155 (5) Not less than thirty (30) days before trial in an
156 asbestos action, the court shall enter into the record a document
157 that identifies every asbestos trust claim made by the plaintiff.

158 **SECTION 5.** The following shall be codified as Section
159 11-67-9, Mississippi Code of 1972:

160 11-67-9. **Identification of additional asbestos trust claims**
161 **by defendant; trust record.** (1) A defendant may file a motion
162 requesting a stay of the proceeding on or before the later of the
163 sixtieth day before the date of trial in the action is set to
164 commence or any other such time for which the defendant has a good
165 faith reasonable basis to request a stay. The motion shall
166 identify the asbestos trust claims not previously identified that
167 the defendant believes the plaintiff can file and include
168 information supporting the asbestos trust claims.

169 (2) Within ten (10) days of receiving the defendant's
170 motion, the plaintiff shall:

171 (a) File the asbestos trust claims; or

172 (b) File a written response with the court requesting a
173 determination that the cost to file the asbestos trust claims
174 exceeds the plaintiff's reasonably anticipated recovery.

175 (3) (a) Subject to paragraph (b) of this subsection (3), if
176 the court determines that there is a basis for the plaintiff to
177 file an asbestos trust claim identified in the motion to stay, the
178 court shall stay the asbestos action until the plaintiff files the

179 asbestos trust claim and produces all related trust claims
180 materials.

181 (b) If the court determines that the cost of submitting
182 an asbestos trust claim exceeds the plaintiff's reasonably
183 anticipated recovery, the court shall stay the asbestos action
184 until the plaintiff files with the court and provides all parties
185 with a verified statement of the plaintiff's history of exposure,
186 usage, or other connection to asbestos covered by that asbestos
187 trust.

188 (4) An asbestos action may not be set for trial until at
189 least sixty (60) days after the plaintiff complies with the
190 requirements of this section.

191 **SECTION 6.** The following shall be codified as Section
192 11-67-11, Mississippi Code of 1972:

193 11-67-11. **Discovery; use of materials.** (1) Trust materials
194 and trust governance documents are presumed to be relevant and
195 authentic, and are admissible in evidence in an asbestos action.
196 A claim of privilege does not apply to any trust materials or
197 trust governance documents.

198 (2) A defendant in an asbestos action may seek discovery
199 from an asbestos trust. The plaintiff may not claim privilege or
200 confidentiality to bar discovery and shall provide consent at the
201 time of asbestos trust identification, including, but not limited
202 to, authorization for release of trust materials or other

203 expression of permission that may be required by the asbestos
204 trust to release information and materials sought by a defendant.

205 (3) Trust materials that are sufficient to entitle a claim
206 to consideration for payment under the applicable trust governance
207 documents are sufficient to support a jury finding that the
208 plaintiff was exposed to products for which the trust was
209 established to provide compensation and that, under applicable
210 law, such exposure is a substantial contributing factor in causing
211 the plaintiff's injury that is at issue in the asbestos action.

212 **SECTION 7.** The following shall be codified as Section
213 11-67-13, Mississippi Code of 1972:

214 11-67-13. **Failure to provide information; sanctions.** (1)

215 If the plaintiff files an asbestos trust claim after the plaintiff
216 obtains a judgment in an asbestos action, and that asbestos trust
217 was in existence at the time the plaintiff obtained the judgment,
218 the trial court, on motion by a defendant or judgment debtor
219 seeking sanctions or other relief, has jurisdiction to reopen the
220 judgment in the asbestos action and adjust the judgment and order
221 any relief to the parties that the court considers just and
222 proper.

223 (2) A defendant or judgment debtor shall file any motion
224 under this section within a reasonable time and not more than one
225 (1) year after the judgment was entered.

226 **SECTION 8.** The following shall be codified as Section
227 11-67-15, Mississippi Code of 1972:

228 11-67-15. **Application.** This chapter shall apply to all
229 asbestos actions filed on or after July 1, 2017, and to all
230 pending asbestos tort actions in which trial has not commenced as
231 of July 1, 2017.

232 **SECTION 9.** This act shall take effect and be in force from
233 and after July 1, 2017.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO CREATE THE ASBESTOS TRANSPARENCY TRUST ACT; TO
2 CREATE NEW SECTION 11-67-1, MISSISSIPPI CODE OF 1972, TO ENACT A
3 SHORT TITLE; TO CREATE NEW SECTION 11-67-3, MISSISSIPPI CODE OF
4 1972, TO MAKE LEGISLATIVE FINDINGS; TO CREATE NEW SECTION 11-67-5,
5 MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW
6 SECTION 11-67-7, MISSISSIPPI CODE OF 1972, TO REQUIRE PLAINTIFF
7 DISCLOSURES; TO CREATE NEW SECTION 11-67-9, MISSISSIPPI CODE OF
8 1972, TO REQUIRE IDENTIFICATION OF ADDITIONAL ASBESTOS TRUST
9 CLAIMS BY A DEFENDANT; TO CREATE NEW SECTION 11-67-11, MISSISSIPPI
10 CODE OF 1972, TO PROVIDE FOR ADMISSIBILITY OF EVIDENCE; TO CREATE
11 NEW SECTION 11-67-13, MISSISSIPPI CODE OF 1972, TO ENACT SANCTIONS
12 FOR FAILURE TO PROVIDE INFORMATION; TO CREATE NEW SECTION
13 11-67-15, MISSISSIPPI CODE OF 1972, TO MAKE TRANSITION PROVISIONS;
14 AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

CONFEREES FOR THE SENATE

X (SIGNED)
Baker

X (SIGNED)
Tindell

X (SIGNED)
Wilson

X (SIGNED)
Clarke

X (SIGNED)
White

X (SIGNED)
Kirby