

Regular Session, 2013

HOUSE BILL NO. 481

BY REPRESENTATIVE GAROFALO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/PROCEDURE: Provides disclosure procedures for asbestos and silica claims

1 AN ACT

2 To enact Code of Civil Procedure Article 1476, relative to discovery in civil proceedings;  
3 to provide for claims involving asbestos and silica; to require the disclosure of  
4 certain information; to provide for time periods for making required disclosures; to  
5 provide for motions to stay proceedings; to provide for supplemental information;  
6 to provide for presumptions; to provide for sanctions; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Article 1476 is hereby enacted to read as follows:

10 Art. 1476. Required disclosures; asbestos and silica

11 A.(1) Within thirty days of commencing an action involving a claim for  
12 injury, disease, or death related to asbestos or silica or within thirty days of the  
13 effective date of this Article with respect to actions that are pending on that effective  
14 date, a plaintiff shall provide to all of the parties in the action a sworn statement by  
15 the plaintiff, under penalty of perjury, identifying all existing claims made by or on  
16 behalf of the plaintiff against any trust created pursuant to Title 11 of the United  
17 States Code, for the purpose of processing, liquidating, paying, or satisfying asbestos  
18 or silica claims and all trust claims material pertaining to each identified trust claim.  
19 The sworn statement shall disclose the date on which each trust claim against the  
20 relevant trust was made and whether any request for a deferral, delay, suspension,

1        or tolling of the trust claims process has been submitted. The submission of the  
2        sworn statement shall be in addition to any disclosure requirements otherwise  
3        imposed by law, court order or ruling, applicable agreement or stipulation, local rule,  
4        or case management order.

5                (2) If the plaintiff, subsequent to the submission of the sworn statement  
6        pursuant to Subparagraph (A)(1) of this Article, files with or submits to any trust  
7        additional trust claims not previously disclosed, the plaintiff shall provide to all of  
8        the parties in the action an amendment updating the sworn statement and identifying  
9        the additional trust claims. The plaintiff shall provide any amendment within thirty  
10       days of filing an additional trust claim with, or submitting an additional trust claim  
11       to, any trust. With respect to any trust claim that a plaintiff discloses in an  
12       amendment to the sworn statement, the plaintiff shall provide to all of the parties in  
13       the action all trust claims material pertaining to each additional trust claim identified  
14       in that amendment. The plaintiff shall provide the trust claims materials within thirty  
15       days of filing or submitting each additional trust claim.

16                (3) Failure to provide to all of the parties in the action all trust claims  
17        material as required by this Article in a timely manner shall constitute grounds for  
18        the court to decline to assign an initial trial date or extend the date set for trial in the  
19        action.

20                (4) Nothing in this Article prevents a court of competent jurisdiction from  
21        requiring any disclosures in addition to the disclosures required by this Article.

22                B.(1) Any defendant in the action may file a motion with the court, with  
23        notice to the plaintiff and to all of the parties in the action, for an order to stay the  
24        proceedings. A defendant's motion to stay the proceedings shall set forth credible  
25        evidence that demonstrates all of the following:

26                (a) The identities of all trusts not previously disclosed by the plaintiff  
27        pursuant to Paragraph A of this Article against which the plaintiff has not made any  
28        trust claims but against which the defendant in good faith believes the plaintiff may  
29        make a successful trust claim.

1           (b) The information that the defendant believes supports the additional trust  
2           claims.

3           (c) A description of the information sufficient to meet the trust claim  
4           requirements of the trusts.

5           (2) Within fourteen days after the filing of the defendant's motion for an  
6           order to stay the proceedings pursuant to Subparagraph (B)(1) of this Article, the  
7           plaintiff may do either of the following:

8                   (a) File the trust claims with or submit them to the trusts identified in the  
9                   defendant's motion for an order to stay the proceedings. The submission to the court  
10                  and to all of the parties in the action of proof demonstrating that the trust claims  
11                  identified in the defendant's motion to stay the proceedings have been filed with or  
12                  submitted to the appropriate trusts is dispositive of the defendant's motion for an  
13                  order to stay the proceedings. Alternatively, the defendant may withdraw the motion  
14                  brought pursuant to Subparagraph (B)(1) of this Article.

15                   (b) File with the court a response to the defendant's motion for an order to  
16                   stay the proceedings requesting a determination by the court that the information  
17                   supporting the trust claims against the trusts identified in the defendant's motion for  
18                   an order to stay the proceedings should be modified prior to the filing of a trust claim  
19                   with, or the submission of a trust claim to, a trust or that there is insufficient  
20                   information to file or submit the trust claim identified in the defendant's motion for  
21                   an order to stay the proceedings.

22                   (3) If the defendant has met its burden pursuant to Subparagraph (B)(1) of  
23                   this Article and if the plaintiff files a response pursuant to Subparagraph (B)(2) of  
24                   this Article, the court shall determine if a successful asbestos claim could be  
25                   submitted in good faith to each trust identified in the defendant's motion for an order  
26                   to stay the proceedings brought pursuant to Subparagraph (B)(1) of this Article. The  
27                   plaintiff has the burden of proof, by a preponderance of the evidence, to demonstrate  
28                   that the information set forth by the defendant pursuant to Subsubparagraphs  
29                   (B)(1)(b) and (c) of this Article should be modified prior to the filing of a trust claim

1 with, or the submission of a trust claim to, each trust identified in the defendant's  
2 motion or that the trust claim should not be filed with or submitted to the trust  
3 because a successful trust claim cannot be made in good faith.

4 (4) If the court determines that there is a good faith basis for filing a trust  
5 claim with, or submitting a trust claim to, a trust identified in the defendant's motion  
6 for an order to stay the proceedings brought pursuant to Subparagraph (B)(1) of this  
7 Article, the court shall stay the proceedings until the plaintiff files the trust claims  
8 with or submits them to the trusts identified in the defendant's motion for an order  
9 to stay the proceedings and has otherwise met the obligations set forth in this  
10 Paragraph and Paragraph A of this Article.

11 C.(1) A noncancer trust claim and a cancer trust claim are based on distinct  
12 injuries caused by a person's exposure to asbestos or silica. A noncancer trust claim  
13 that is subject to disclosure pursuant to this Article means the noncancer claim that  
14 is the subject of the action in which the defendant seeks discovery. If a plaintiff  
15 previously filed a noncancer trust claim with, or submitted a noncancer trust claim  
16 to, a trust and subsequently filed an action based on a cancer claim, a trust claim that  
17 is subject to disclosure pursuant to this Article means both the earlier filed noncancer  
18 trust claim and the cancer claim that is the subject of the subsequent action.

19 (2) Trust claims and the information that is the subject of disclosure pursuant  
20 to this Article are presumed to be authentic, relevant to, and discoverable in an  
21 action. Notwithstanding any agreement or confidentiality provision, trust claims  
22 material are presumed to not be privileged. The parties in the action may introduce  
23 at trial any trust claims material to prove alternative causation for the exposed  
24 person's claimed injury, death, or loss to person, to prove a basis to allocate  
25 responsibility for the plaintiff's claimed injury, death, or loss to person, and to prove  
26 issues relevant to an adjudication of the claim, unless the exclusion of the trust  
27 claims material is otherwise required by the rules of evidence. A trust claim rejected  
28 by a trust may be excluded as evidence if the exclusion is required by the rules of  
29 evidence.

1           (3) In addition to the disclosure requirements set forth in this Article, the  
2           parties to the action may seek additional disclosure and discovery of information  
3           relevant to the action by any mechanism provided by law. In addition to the  
4           disclosure described in this Article, any defendant in the action also may seek  
5           discovery of the plaintiff's trust claims directly from the trusts involved.

6           (4) In an action, upon the filing by a defendant or judgment debtor of an  
7           appropriate motion seeking sanctions or other relief, the court may impose any  
8           sanction provided by a law of this state, including but not limited to vacating a  
9           judgment rendered in an action for a plaintiff's failure to comply with the disclosure  
10          requirements of this Article.

11          (5) If subsequent to obtaining a judgment in an action in this state a plaintiff  
12          files any additional trust claim with, or submits any additional trust claim to, a trust  
13          that was in existence at the time the plaintiff obtained that judgment, the trial court,  
14          upon the filing by a defendant or judgment debtor of an appropriate motion seeking  
15          sanctions or other relief, has jurisdiction to reopen its judgment in the action and do  
16          either of the following:

17                 (a) Adjust the judgment by the amount of any subsequent trust payments  
18                 obtained by the plaintiff.

19                 (b) Order any other relief to the parties that the court considers just and  
20                 proper.

21          Section 2. The provisions of this Act shall apply to all asbestos and silica claims  
22          filed on or after the effective date of this Act and to any pending asbestos or silica claims in  
23          which no trial date has been set as of the effective date of this Act.

24          Section 3. This Act shall become effective upon signature by the governor or, if not  
25          signed by the governor, upon expiration of the time for bills to become law without signature  
26          by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
27          vetoed by the governor and subsequently approved by the legislature, this Act shall become  
28          effective on the day following such approval.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Garofalo

HB No. 481

**Abstract:** Provides disclosure procedures for asbestos and silica claims.

Proposed law requires a plaintiff to provide to all of the parties in the action a sworn statement identifying all existing claims and certain details of the claims made by or on behalf of the plaintiff against any trust created pursuant to Title 11 of the United States Code within 30 days of commencing an action involving a claim for injury, disease, or death related to asbestos or silica or within 30 days of the effective date of proposed law.

Proposed law provides that the submission of the sworn statement shall be in addition to any disclosure requirements otherwise imposed by law, court order or ruling, applicable agreement or stipulation, local rule, or case management order, and that the statement shall be amended to detail any claims filed subsequent to the original sworn statement.

Proposed law provides that failure to provide to all of the parties in the action all trust claims material in a timely manner shall constitute grounds for the court to decline to assign an initial trial date or extend the date set for trial in the action.

Proposed law authorizes any defendant in the action to file a motion with the court for an order to stay the proceedings, and requires the defendant to set forth certain credible evidence.

Proposed law provides that within 14 days after the filing of the defendant's motion for an order to stay the proceedings, the plaintiff may either file the trust claims with the trusts identified in the motion or file with the court a response to the defendant's motion for an order to stay the proceedings.

Proposed law provides that if the defendant has met its burden and if the plaintiff files a response with the court, the court shall determine if a successful asbestos claim could be submitted in good faith to each trust identified in the defendant's motion.

Proposed law provides that the plaintiff has the burden of proof, by a preponderance of the evidence, to demonstrate that the information set forth by the defendant should be modified prior to the filing of a trust claim with each trust identified in the defendant's motion or that the trust claim should not be filed with the trust because a successful trust claim cannot be made in good faith.

Proposed law provides that if the court determines that there is a good faith basis for filing a trust claim with a trust, the court shall stay the proceedings until the plaintiff files the trust claims with the trusts and has otherwise met the obligations set forth in proposed law.

Proposed law provides that a noncancer trust claim and a cancer trust claim are based on distinct injuries caused by a person's exposure to asbestos or silica, and that a noncancer trust claim that is subject to disclosure means the noncancer claim that is the subject of the action in which the defendant seeks discovery.

Proposed law provides that if a plaintiff previously filed a noncancer trust claim with a trust and subsequently filed an action based on a cancer claim, a trust claim that is subject to disclosure under proposed law means both the earlier filed noncancer trust claim and the cancer claim that is the subject of the subsequent action.

Proposed law provides that trust claims and the information that is the subject of disclosure are presumed to be authentic, relevant to, and discoverable in an action, and that trust claims material are presumed to not be privileged.

Proposed law authorizes the parties to introduce at trial any trust claims material to prove alternative causation for the exposed person's claimed injury, death, or loss to prove a basis to allocate responsibility for the plaintiff's claim, and to prove issues relevant to an adjudication of the claim, unless the exclusion of the trust claims material is otherwise required by the rules of evidence.

Proposed law authorizes the parties to seek additional disclosure and discovery of information relevant to the action by any mechanism provided by law, including seeking discovery of the plaintiff's trust claims directly from the trusts involved.

Proposed law provides that in an action, upon the filing by a defendant or judgment debtor of a motion seeking sanctions or other relief, the court may impose any sanction provided by a law.

Proposed law provides that if subsequent to obtaining a judgment in an action in this state a plaintiff files any additional trust claim with a trust that was in existence at the time the plaintiff obtained that judgment, the trial court, upon the defendant's or judgment debtor's motion seeking sanctions, has jurisdiction to reopen its judgment in the action in order to adjust the judgment by the amount of any subsequent trust payments, or order any other relief to the parties that the court considers just and proper.

Proposed law applies to all asbestos and silica claims filed on or after the effective date of proposed law and to all pending claims in which no trial date has been set as of the effective date of proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds C.C.P. Art. 1476)