

2018 Regular Session

HOUSE BILL NO. 209

BY REPRESENTATIVE GAROFALO

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; to provide for applicability;
7 and to provide for related 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 timely provide to all of the parties in the action all trust claims
17 material as required by this Article shall constitute grounds for the court to decline
18 to assign an initial trial date or extend the date set for trial in the action.

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

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

25 (a) The identities of all trusts not previously disclosed by the plaintiff
26 pursuant to Paragraph A of this Article against which the plaintiff has not made any
27 trust claims but against which the defendant in good faith believes the plaintiff may
28 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 there is a good faith basis for filing a trust claim
5 with, or submitting a trust claim to, a trust identified in the defendant's motion for
6 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 not to 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.

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)]

HB 209 Original

2018 Regular Session

Garofalo

Abstract: Provides disclosure procedures for asbestos and silica claims.

Proposed law requires a plaintiff to provide to all 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 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 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)