

Regular Session, 2014

SENATE BILL NO. 562

BY SENATOR WALSWORTH

CIVIL PROCEDURE. Provides disclosure procedures for asbestos and silica claims.
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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

Art. 1476. Required disclosures; asbestos and silica

A.(1) Within thirty days of commencing an action involving a claim for injury, disease, or death related to asbestos or silica or within thirty days of the effective date of this Article with respect to actions that are pending on that effective date, a plaintiff shall provide to all of the parties in the action a sworn statement by the plaintiff, under penalty of perjury, identifying all existing claims made by or on behalf of the plaintiff against any trust created pursuant to Title 11 of the United States Code, for the purpose of processing, liquidating,

1 paying, or satisfying asbestos or silica claims and all trust claims material
2 pertaining to each identified trust claim. The sworn statement shall disclose the
3 date on which each trust claim against the relevant trust was made and whether
4 any request for a deferral, delay, suspension, or tolling of the trust claims
5 process has been submitted. The submission of the sworn statement shall be in
6 addition to any disclosure requirements otherwise imposed by law, court order
7 or ruling, applicable agreement or stipulation, local rule, or case management
8 order.

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

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

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

28 B.(1) Any defendant in the action may file a motion with the court, with
29 notice to the plaintiff and to all of the parties in the action, for an order to stay

1 the proceedings. A defendant's motion to stay the proceedings shall set forth
2 credible evidence that demonstrates all of the following:

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

7 (b) The information that the defendant believes supports the additional
8 trust claims.

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

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

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

22 (b) File with the court a response to the defendant's motion for an order
23 to stay the proceedings requesting a determination by the court that the
24 information supporting the trust claims against the trusts identified in the
25 defendant's motion for an order to stay the proceedings should be modified
26 prior to the filing of a trust claim with, or the submission of a trust claim to, a
27 trust or that there is insufficient information to file or submit the trust claim
28 identified in the defendant's motion for an order to stay the proceedings.

29 (3) If the defendant has met its burden pursuant to Subparagraph (B)(1)

1 of this Article and if the plaintiff files a response pursuant to Subparagraph
2 (B)(2) of this Article, the court shall determine if a successful asbestos claim
3 could be submitted in good faith to each trust identified in the defendant's
4 motion for an order to stay the proceedings brought pursuant to Subparagraph
5 (B)(1) of this Article. The plaintiff has the burden of proof, by a preponderance
6 of the evidence, to demonstrate that the information set forth by the defendant
7 pursuant to Subsubparagraphs (B)(1)(b) and (c) of this Article should be
8 modified prior to the filing of a trust claim with, or the submission of a trust
9 claim to, each trust identified in the defendant's motion or that the trust claim
10 should not be filed with or submitted to the trust because a successful trust
11 claim cannot be made in good faith.

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

19 C.(1) A noncancer trust claim and a cancer trust claim are based on
20 distinct injuries caused by a person's exposure to asbestos or silica. A
21 noncancer trust claim that is subject to disclosure pursuant to this Article
22 means the noncancer claim that is the subject of the action in which the
23 defendant seeks discovery. If a plaintiff previously filed a noncancer trust claim
24 with, or submitted a noncancer trust claim to, a trust and subsequently filed an
25 action based on a cancer claim, a trust claim that is subject to disclosure
26 pursuant to this Article means both the earlier filed noncancer trust claim and
27 the cancer claim that is the subject of the subsequent action.

28 (2) Trust claims and the information that is the subject of disclosure
29 pursuant to this Article are presumed to be authentic, relevant to, and

1 discoverable in an action. Notwithstanding any agreement or confidentiality
2 provision, trust claims material are presumed to not be privileged. The parties
3 in the action may introduce at trial any trust claims material to prove
4 alternative causation for the exposed person's claimed injury, death, or loss to
5 person, to prove a basis to allocate responsibility for the plaintiff's claimed
6 injury, death, or loss to person, and to prove issues relevant to an adjudication
7 of the claim, unless the exclusion of the trust claims material is otherwise
8 required by the rules of evidence. A trust claim rejected by a trust may be
9 excluded as evidence if the exclusion is required by the rules of evidence.

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

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

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

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

29 (b) Order any other relief to the parties that the court considers just and

1 **proper.**

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

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Walsworth (SB 562)

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)