

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2495

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KEATON

[Introduced February 15, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §55-7-32; and to amend and reenact §55-7G-4 and §55-7G-8 of said code, all
 3 relating to the filing of asbestos and silica claims; providing that a product liability
 4 defendant may not be held liable for products sold by a third party; providing that plaintiffs
 5 shall include a sworn information with any asbestos or silica action filed after the effective
 6 date of the amendments to the code; specifying the information to be included in a sworn
 7 information; providing for the dismissal without prejudice of asbestos or silica actions filed
 8 against defendants whose product or premises have not been identified; providing for the
 9 dismissal without prejudice of asbestos or silica actions for failure to comply with sworn
 10 information filing requirements; and allowing for the consolidation of any asbestos or silica
 11 actions with the consent of all parties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-32. Non-liability for Third-Party Asbestos Products

1 A product liability defendant in an asbestos-related tort action shall not be liable for
 2 exposures from later-added materials made or sold by a third party.

ARTICLE 7G. ASBESTOS AND SILICA CLAIMS PRIORITIES ACT.

§55-7G-4. Filing claims; establishment of a prima facie case; additional required information for new nonmalignant claims; individual actions to be filed

3 (a) A plaintiff in an asbestos or silica action alleging a nonmalignant condition shall file
 4 within ninety days of filing the complaint or other initial pleading a detailed narrative medical report
 5 and diagnosis, signed by a qualified physician and accompanied by supporting test results,
 6 constituting prima facie evidence that the exposed person meets the requirements of this article.
 7 The report shall not be prepared by a lawyer or person working for or on behalf of a lawyer or law
 8 firm.

9 (b) A defendant in an asbestos or silica action shall be afforded a reasonable opportunity
10 before trial to challenge the adequacy of the prima facie evidence that the exposed person meets
11 the requirements of this article. An asbestos or silica action shall be dismissed without prejudice
12 upon a finding that the exposed person has failed to make the prima facie showing required by
13 this article.

14 (c) A plaintiff in an asbestos or silica action filed on or after the effective date of this article
15 prior to the effective date of the amendments to this article enacted during the 2021 regular
16 session of the Legislature shall also include an information form with the complaint for
17 nonmalignant conditions containing all of the following:

18 (1) The name, address, date of birth, social security number, marital status, occupation
19 and employer of the exposed person and any person through which the exposed person alleges
20 exposure;

21 (2) The plaintiff's relationship to the exposed person or the person through which the
22 exposure is alleged;

23 (3) To the best of the plaintiff's ability, the location and manner of each alleged exposure,
24 including the specific location and manner of exposure for any person through which the exposed
25 person alleges exposure, the beginning and ending dates of each alleged exposure and the
26 identity of the manufacturer of the specific asbestos or silica product for each exposure when this
27 information is reasonably available;

28 (4) The identity of the defendant or defendants against whom the plaintiff asserts a claim;

29 (5) The specific asbestos-related or silica-related disease claimed to exist; and

30 (6) Any supporting documentation relating to subdivisions (3), (4) and (5) of this
31 subsection.

32 (d) For any asbestos or silica action filed on or after the amendments to this article enacted
33 during the 2021 regular session of the Legislature, a plaintiff shall file within 30 days of filing any
34 complaint a sworn information form that specifies the evidence that provides the basis for each

35 claim against each defendant. The sworn information form shall include all of the following with
36 specificity:

37 (1) The name, address, date of birth, social security number, marital status, occupation,
38 smoking history, current and past worksites, and current and past employers of the exposed
39 person, and any person through which the exposed person alleges exposure;

40 (2) Each person through whom the exposed person was exposed to asbestos or silica and
41 the exposed person's relationship to each such person;

42 (3) Each asbestos-containing or silica-containing product to which the person was
43 exposed and each physical location at which the person was exposed to asbestos or silica, or the
44 other person was exposed if exposure was through another person;

45 (4) The identity of the manufacturer or seller of the specific asbestos or silica product for
46 each exposure;

47 (5) The specific location and manner of each exposure, including for any person through
48 whom the exposed person was exposed;

49 (6) The beginning and ending dates of each exposure, the frequency and length of each
50 exposure, and the proximity of the asbestos-containing product or silica-containing product or its
51 use to the exposed person, and any person through whom the exposed person was exposed;

52 (7) The specific asbestos-related or silica-related disease claimed to exist; and

53 (8) Any supporting documentation relating to the information required under this section.

54 (e) Plaintiffs have a continuing duty to supplement the information that is required to be
55 disclosed in this section.

56 (f) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action
57 without prejudice as to any defendant whose product or premises is not identified in the required
58 disclosures set forth in subsection (d) of this section.

59 (g) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action
60 without prejudice as to all defendants if plaintiff fails to comply with the requirements of subsection

61 (d) this section.

62 ~~(d)~~ (h) Asbestos and silica actions must be individually filed. No asbestos or silica action
63 filed on or after the effective date of this article shall be permitted on behalf of a group or class of
64 plaintiffs.

§55-7G-8. Procedures

65 (a) Evidence relating to the prima facie showings required under this article shall not create
66 any presumption that the exposed person has an asbestos-related or silica-related injury or
67 impairment and shall not be conclusive as to the liability of any defendant.

68 (b) No evidence shall be offered at trial, and the jury shall not be informed of:

69 (1) The grant or denial of a motion to dismiss an asbestos or silica action under the
70 provisions of this article; or

71 (2) The provisions of this article with respect to what constitutes a prima facie showing of
72 asbestos or silica-related impairment.

73 (c) Until a court enters an order determining that the exposed person has established
74 prima facie evidence of impairment, no asbestos or silica action shall be subject to discovery,
75 except discovery related to establishing or challenging the prima facie evidence or by order of the
76 trial court upon motion of one of the parties and for good cause shown.

77 (d) Consolidation of cases. --

78 (1) A court may consolidate for trial any number and type of ~~nonmalignant~~ asbestos or
79 silica actions with the consent of all the parties. In the absence of such consent, the court may
80 consolidate for trial only asbestos or silica actions relating to the exposed person and members
81 of that person's household.

82 (2) No class action or any other form of mass aggregation relating to more than one
83 exposed person and members of that person's household shall be permitted.

84 (3) The provisions of this subsection do not preclude consolidation of cases by court order
85 for pretrial or discovery purposes.

NOTE: The purpose of this bill is to further clarify procedures for the handling of asbestos and silica litigation and to enhance the ability of the judicial system to manage such litigation by requiring the filing of additional information to verify that there is a factual basis for each claim against each defendant; to ensure that defendants are not subject to liability for later-added asbestos-containing products manufactured or sold by third parties; and to allow for the consolidation of asbestos or silica actions at trial with the consent of all parties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.