

SB 26-FN - AS INTRODUCED

2023 SESSION

23-0879

04/05

SENATE BILL        ***26-FN***

AN ACT            relative to asbestos actions.

SPONSORS:        Sen. Gannon, Dist 23; Sen. Fenton, Dist 10; Sen. Murphy, Dist 16; Rep. Piemonte, Rock. 9

COMMITTEE:      Judiciary

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ANALYSIS

This bill provides asbestos defendants who have no connection to the plaintiff's claim a way to avoid being sued in an asbestos action or to have their cases dismissed earlier.

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Explanation:      Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears ~~in brackets and struckthrough.~~  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT                      relative to asbestos actions.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            1   New Chapter; Asbestos actions.   Amend RSA by inserting after chapter 507-G the following  
2   new chapter:

3    CHAPTER 507-H

4    ASBESTOS ACTIONS

5            507-H:1   Definitions.   In this chapter:

6                      I. "Asbestos action" means a claim for damages or other relief, including but not limited to  
7   declaratory or equitable relief, presented in a civil action arising out of, based on, or related to the  
8   health effects of exposure to asbestos and a derivative claim made by or on behalf of a person  
9   exposed to asbestos or a representative, spouse, parent, child, or other relative of that person.

10                    II. "Asbestos trust" means a government-approved or court-approved trust, qualified  
11   settlement fund, compensation fund or claims facility created as a result of an administrative or  
12   legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C. section 524(g) or 11 U.S.C.  
13   section 1121(a) or other applicable provision of law that is intended to provide compensation to  
14   claimants arising out of, based on, or related to the health effects of exposure to asbestos.

15                    III. "Trust claim materials" means a final executed proof of claim and documents or  
16   information submitted to or received from an asbestos trust, including claim forms and  
17   supplementary materials, proofs of claim, affidavits, depositions, medical and health records, trial  
18   testimony, work history, and exposure allegations; documents that reflect the status of a claim  
19   against an asbestos trust, and for each trust claim that has been resolved, documents relating to the  
20   resolution of the trust claim.

21                    IV. "Trust governance documents" means documents that relate to eligibility and payment  
22   levels for an asbestos trust, including claims payment matrices, trust distribution procedures, or  
23   plans for reorganization.

24            507-H:2   Required Disclosures by Claimant.

25                    I. Within 30 days after an asbestos action is filed, the claimant shall:

26                    (a) File all available asbestos trust claims, produce all trust claims materials, and file a  
27   sworn statement indicating that all asbestos trust claims that can be made by the claimant have  
28   been filed and that all trust claims materials produced by the claimant are true and complete. A  
29   deferral or placeholder claim that is missing necessary documentation for the asbestos trust to pay  
30   the claim shall not meet the requirements of this section. The claimant shall produce all trust  
31   claims filed by a person other than the claimant if the claimant's asbestos action is based on

1 exposure to asbestos through that person and the materials are available to the claimant or  
2 claimant's counsel; and

3 (b) File a sworn information form specifying the evidence that provides the basis for  
4 each claim against each defendant. The sworn information form shall include the following with  
5 specificity:

6 (1) The name, address, date of birth, marital status, occupation, smoking history,  
7 current and past worksites, and current and past employers of the exposed person and any person  
8 through whom the exposed person alleges exposure to asbestos;

9 (2) The name, address, and relationship to the exposed person for each person who is  
10 knowledgeable regarding the exposed person's exposures to asbestos;

11 (3) The specific name of each asbestos-containing product, including but not limited  
12 to all brand and trade names of that specific asbestos-containing product, to which the exposed  
13 person was exposed or the other person was exposed if exposure was through another person;

14 (4) The identity of the manufacturer or seller of the specific asbestos product for each  
15 exposure;

16 (5) For each product identified pursuant to subparagraph (3), each site and specific  
17 location at each site, including the address of each site, where the exposed person was exposed or the  
18 other person was exposed if exposure was through another person;

19 (6) The beginning and ending dates of each exposure, the specific manner of each  
20 exposure, the frequency and length of each exposure, and the proximity of the asbestos-containing  
21 product or its use to the exposed person and each person through whom the exposed person alleges  
22 exposure to asbestos;

23 (7) The asbestos-related disease that is alleged; and

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

26 II. A claimant has a continuing duty to supplement the information required to be disclosed  
27 in paragraph I.

28 III. Discovery may not commence against a defendant in an asbestos action until the  
29 defendant's product or premises is specifically identified in the disclosures required by subparagraph  
30 I(b);

31 IV. The court, on motion by a defendant, shall dismiss a claimant's asbestos claim without  
32 prejudice as to any defendant whose product or premises is not specifically identified in the  
33 disclosures required by subparagraph I(b).

34 V. The court, on motion by a defendant, shall dismiss a claimant's asbestos claim without  
35 prejudice as to the moving defendant or as to all defendants, as applicable, if the claimant fails to  
36 comply with this section.

37 507-H:3 Filing of Additional Trust Claims.

1 I. Not less than 60 days before trial of an asbestos action, if a defendant believes the  
2 claimant has not filed all asbestos trust claims as required by RSA 507-H:2, the defendant may move  
3 the court for an order to require the claimant to file the additional trust claims the defendant  
4 believes the claimant is eligible to file.

5 II. If the court determines there is a sufficient basis for the claimant to file an asbestos trust  
6 claim identified by the defendant, the court shall order the claimant to file the asbestos trust claim,  
7 produce all related trust claim materials, and produce an affidavit stating that all such materials are  
8 true and complete. The court shall not set the asbestos action for trial earlier than 90 days after the  
9 claimant complies with this section.

10 507-H:4 Discovery.

11 I. Trust claim materials and trust governance documents are admissible as evidence in an  
12 asbestos action and are presumed to be relevant and authentic. No claims of privilege apply to trust  
13 claim materials or trust governance documents.

14 II. A defendant in an asbestos action may seek discovery from an asbestos trust. The  
15 claimant may not claim privilege or confidentiality to bar discovery and shall provide consent or  
16 other expression of permission that may be required by the asbestos trust to release information and  
17 materials sought by a defendant.

18 III. Trust claim materials may be used to prove:

- 19 (a) An alternative source for the cause of the claimant's injury, death, or loss;  
20 (b) A basis to allocate responsibility for the claimant's injury, death, or loss; or  
21 (c) Any other issue relevant to adjudication of a claim asserted in the asbestos action.

22 2 Effective Date. This act shall take effect January 1, 2024.

**SB 26-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to asbestos actions.

**FISCAL IMPACT:**    ☒ State                    ☐ County                    ☐ Local                    ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable (minor decrease)	Indeterminable (minor decrease)	Indeterminable (minor decrease)
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

This bill provides asbestos defendants who have no connection to the plaintiff's claim a way to avoid being sued in an asbestos action or to have their cases dismissed earlier.

The Judicial Branch indicates the fiscal impact of this bill on the Branch would be minimal. In an asbestos action filed in court, this bill would create a requirement that the plaintiff file a sworn information form that provides the basis for each claim against each defendant. Failure to include a defendant's product or premises would be a basis for dismissal. If a defendant believes the plaintiff has not filed all Asbestos Trust Claims required under the bill, the defendant may move to dismiss the case. The Branch does not track the number asbestos actions filed in court and does not have information on the average number of such cases. The Branch assumes the bill could result in a minor decrease in the number of claims filed, but does not believe it would have a substantive financial impact. The Judicial Branch would also have a one-time cost of developing the sworn information form described in the bill under RSA 507-H:2.

**AGENCIES CONTACTED:**

Judicial Branch