

**2017 HOUSE JUDICIARY**

**HB 1197**

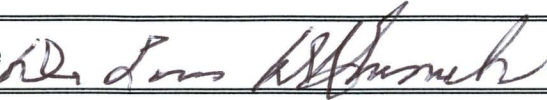
# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1197  
2/8/2017  
28053

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to asbestos bankruptcy trust transparency and the prioritization of asbestos and silica claims; to provide an effective date; and to declare an emergency.

Minutes:

1,2,3,4

**Vice Chairman Karls:** Opened the hearing on HB1197.

**Rep. K. Koppelman:** Introduced the bill. (#1) (1:15-4:30) Today there are two separate avenues to bring claims on asbestos. There were over 60 trusts in operation and hold \$36 billion. This bill simply requires asbestos trust claims. The second part of this bill says you need to be sick to sue. This part of the law is law in eight states. As I stepped into the hall there was a group of people who were going to testify against the bill. It was the trial lawyers and the labor unions. They have come to an agreement with the folks who have written this legislation in other states and the agreement is I will submit an amendment that will eliminate page 5, line 8 – 16 line 21. We need to amend the title as part of that.

**Representative Vetter:** Basically from 5 till the end of the bill are gone?

**Rep. K. Koppelman:** Yes that is correct.

**Representative Klemin:** Removing Chapter 2 what does that do to those two things that you mentioned?

**Representative Paur:** The act has a July 31 and then an emergency clause?

**Rep. K. Koppelman:** That is a good question? I don't know why that is in there? It is unless the emergency clause carries.

**Representative Klemin:** Why do we need those if we took all those sections out?

**Mark Barons, US Chamber Institute for Legal Reform: (#2)** Pass out Settlement Form. We just reached an agreement today is a good one for both sides. The plaintiff that were set up by the companies that for 40 years were the major asbestos producers. They are all bankrupt. These trusts were setup to pay people for injuries because of exposures to their products. We also have a tort system today where companies can be sued in the tort system for exposures that they may have produced that the plaintiff's had. So plaintiffs can go to both of those systems. The controversy has been when the trust claims have been filed. They have been filed after the tort claim happens the jury doesn't have the benefit of having that information before it when they are deciding who is at fault. These people have just a little time to live. Often times 6 months to a year at most. Today when trust claims are filed after trial frequently the victim is no longer even alive to see that money. By requiring the trust claims to be paid early in the case we substantially benefit those families by getting them more money more quickly than they get today. We think the deal is good and we encourage the committee to accept it.

**Representative Klemin:** What is being left in here and what is being taken out?

**Mark Barons:** The bill had two parts. Part 1 of the bill is trust transparency that says plaintiffs have to file their trust claims early in a case so that the evidence is available and the jury can consider that when they are appropriating fault and they get paid more quickly on those claims. Part 2 of the bill establishes medical criteria to bring the case to court. It was an attempt to filter out the more serious cases of asbestosis while filtering out but preserving the cases of people without palmary function impairment.

**Representative Klemin:** The bill says we will do trust claims first before they can commence litigation under tort law?

**Mark Barons:** The bill provides the plaintiff can file the complaint and they have 30 days to get their trust claims filed. (14:37) Showed us a copy of a claim form and went over it. (#2)

**Representative Klemin:** You stated you had to file your trust claim first. Now you are saying you have to file it within 30 days after your claim is filed?

**Mark Barons:** They have a 40-year history of law suits. There are probably 80,000 claims that have been filed over the years. The trust fund uses that as a basis for a claim. The trust system is set up to pay people quickly. When the trust gets this form they literally just look to see if all the boxes are checked correctly and the supporting documentation is there. In other states we asked how it has worked. There is a provision here to go to the court and say we have six trust claims and we have reason to believe based on where this plaintiff worked and what he did that he has 14 other claims that he is eligible to file and there is a motion practice with the court to have a motion and they will rule on that. The court will put a stay on the proceedings until that is done. If the court fines there is no evidence for additional claim filing; the judge says motion denied and the case goes forward. Ohio, Virginia and West Virginia; the judges have found this makes the cases move more quickly. Today there is often motion practice.

**Representative Klemin:** So if a trust pays a claimant, then that claimant has to disclosure to the defendants and then that payment is to be used by the jury in determine the amount

of damages for a particular defendant because it seems like this bill is saying it is sufficient to support a jury finding that the plaintiff was established. Now we are saying that liability is assumed if there is a trust payment in the issue of just damages and the amount of the damages have been reduced by the amount of trust payment?

**Representative Klemin:** What happens with those defendants that don't have trust established?

**Mark Barons:** The jury will figure out the fault. A treating physician has to fill out his diagnosis. What is normal practice in ND we would do.

Representative Klemin: Section 4 & 5 on the effective date and the emergency clause. Is that really necessary anymore?

Mark Barons: Whatever the committee chooses to do on that is OK. Whatever is normal practice in ND.

**Chairman K. Koppelman:** Explained how the emergency clause works. (24:20-25:20)

**Mark Barons:** We would like to see it take effect sooner better than later.

**Representative Klemin:** Without 4 and 5 the effective then it is August 1 because that is the normal effective date.

**Representative Nelson:** You talked about for the sick people; yet I see on page 3, line 12 an asbestos action may not precede the trial until at least 180 days after the requirements of this section has been met. What is the purpose of that if it is so important that the settlements be reached quickly?

**Mark Barons:** The purpose is to provide 6 months. Missouri is now the 4<sup>th</sup> largest magnet for asbestos cases is not any delay for anyone's claim. It provides an opportunity for the parties to digest all this information.

**Representative Nelson:** In Section 1 basically is setting out court procedures. I thought the Supreme Court set out court procedures. Wouldn't this be a matter for the Supreme Court to do rather than the legislator?

**Mark Barons:** It is to help plaintiffs to get paid more quickly.

**Representative Nelson:** We have this proposed amendment which is most of the bill but we haven't adopted it? Why are we having the hearing only on section 1?

**Chairman K. Koppelman:** I agreed to offer that amendment. If the committee wants to hear that whole bill. It is unusual.

**Andy Peterson: Greater ND Chamber: (#3) (31:00-34:30)** Reading his testimony.

**Representative Paur:** We haven't mentioned silica claims? We haven't mentioned silica and that is in the part we have deleted. Please explain that?

**Representative Hanson:** You said you like the bill; because it helps disclosure other cases that might be active. You referenced the double dipping. To what extent is this a problem today?

**Chairman K. Koppelman:** Is that a priority for both the US and Greater ND Chambers.

**Andy Peterson:** Yes it is a priority.

**Mark Barons:** Silica is sand. When people so sand blasting without protection they can get something called silicosis, which is a scaring of the lung that can cause disability. There are no cases pending in North Dakota. It has been an issue in other states.

**Representative Hanson:** What cases are there of double dipping?

**Mark Barons:** Three years ago there was a federal bankruptcy case involving a gasket company called Gorlock had settled cases in the tort system and then when they went into bankruptcy they were able to ask the judge to go back and look when we asking plaintiffs have you filed trust claims or do you intent to file trust claims and they were told no. in those instances, everyone did go back later and file trust claims. This bill gets to that problem where plaintiffs being unable to recall certain exposures when they are deposed in a tort case and then all the evidence we see that has come out says that after the fact more often than not suddenly they do remember about these other exposures after the case has already gone to trial. This bill is trying to get that information before the jury so they can her that information when they are deciding fault.

**Representative Paur:** Yes, it is for the non-cancer conditions. Is the damage to the body with asbestos and silica?

**Mark Barons:** It cases scaring to your lungs.

**Representative Paur:** So you can file an asbestos claim suffering from silica inhalation either through a trust get judgement for the wrong condition?

**Mark Barons:** It is based on what types of exposure that somebody had. The plaintiff's lawyer would determine that.

**David Clark Thompson, Lawyer, Grand Forks, ND:** Originally I was going to be opposed to the bill. It is one of the few jurisdictions that have excluded think this is a good bill now with Section 2 out of it. This bill benefits everyone.

**Representative Nelson:** What is rule 408 enacted by the Supreme Court? It protects bankruptcy claims.

**David Thompson:** It is a rule of evidence.

**Mark Johnson, Director of State Affairs, NAMIC: (#4) (49:37)** I have nothing to add that hasn't been stated before.

**Representative Nelson:** How does the insurance company work for this type of thing?

**Mark Johnson:** It depends on the policy. There are things that are called claims made policies and then there are the policies called the tail. It would depend on what the employer purchased.

**Representative Jones:** By getting rid of abuse you are saving the trust money?

**Mark Johnson:** Yes. We have had people filing for claims and these trusts have a limited amount of resources.

**Representative Nelson:** Are you talking about legal fraud?

**Mark Johnson:** Fraud would depend on the individual circumstance. No one has been acquired of these?

Opposition: None

Neutral: None

Hearing closed.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1197  
2/8/2017 PM  
28075

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to asbestos bankruptcy trust transparency and the prioritization of asbestos and silica claims; to provide an effective date; and to declare an emergency.

Minutes:

**Chairman K. Koppelman:** Opened the meeting on HB 1197.

**Representative Vetter:** silica would be dust that you breath in and it attaches to your lungs.

**Chairman K. Koppelman:** The amendment suggested was on page 1, lines 2 & 3 would amend it to strike correcting the title with the proper wording. Strike page 5, line 8 thru page 16, line 31. That is section 2 of the bill.

**Motion Made to move the amendment as stated above by Representative Maragos:  
Seconded by Representative Vetter:**

**Representative Maragos:** This was a resolution agreed to by the parties and I think we should solidify the agreement and get this bill out.

**Voice vote carried.**

**Representative Klemin:** These cases in court are going on for years so I don't see the problem with these going into effect earlier with the emergency clause. If we put this bill into effect it would have to include those pending cases.

**Representative Paur:** During testimony when this was brought up it was fine deleting those last two sections.

**Representative Vetter:** What if we got rid of section 4; then you would have to get 2/3 vote to get the emergency, right?

**Motion Made to move an amendment to remove line 22 on page 16 by Representative Vetter: Seconded by Representative Maragos:**

Discussion: None

**Voice vote carried.**

**Do Pass as Amended Motion Made by Representative Maragos: Seconded by Rep. Simons.**

**Roll Call Vote: 15 Yes 0 No 0 Absent Carrier: Vice Chairman Karls**

Closed.



2/6/17 DA

17.0403.03001  
Title.04000

Adopted by the Judiciary Committee

February 8, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1197

- Page 1, line 1, replace "two" with "a"
- Page 1, line 1, replace "chapters" with "chapter"
- Page 1, line 2, remove "and the prioritization of asbestos and"
- Page 1, line 3, remove "silica claims; to provide an effective date"
- Page 5, remove lines 8 through 31
- Page 6, remove lines 1 through 31
- Page 7, remove lines 1 through 31
- Page 8, remove lines 1 through 31
- Page 9, remove lines 1 through 31
- Page 10, remove lines 1 through 31
- Page 11, remove lines 1 through 31
- Page 12, remove lines 1 through 31
- Page 13, remove lines 1 through 31
- Page 14, remove lines 1 through 30
- Page 15, remove lines 1 through 29
- Page 16, remove lines 1 through 22
- Renumber accordingly

Date: 2-8-17  
 Roll Call Vote 1

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO 1197-PM**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Strike pg 5, line 8-16 + line 31

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Maragos    Seconded By Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment : \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 2-8-17  
 Roll Call Vote 2

2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO 1197

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Line 22 - effective date delete.

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Vetter    Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

*Vote Carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO 1197

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0483.03061

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep Maragos Seconded By Rep Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment : Rep. Karls

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1197: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1197 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "chapters" with "chapter"

Page 1, line 2, remove "and the prioritization of asbestos and"

Page 1, line 3, remove "silica claims; to provide an effective date"

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Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 31

Page 14, remove lines 1 through 30

Page 15, remove lines 1 through 29

Page 16, remove lines 1 through 22

Re-number accordingly

**2017 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1197**

# 2017 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

Engrossed HB 1197  
3/1/2017  
Job Number 28541

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Liebelt*

### Explanation or reason for introduction of bill/resolution:

Relating to asbestos bankruptcy trust transparency

### Minutes:

7 Attachments

**Chairman Klein:** Called the committee to order.

**Representative Kim Koppelman:** Introduced the bill. Written testimony, see attachment #1 and proposed amendment, see attachment #2. (1:00-5:40)

**Chairman Klein:** Are we adopting something similar to the other eight states you spoke to and are we still on track?

**Representative Koppelman:** We are but I think Mr. Behrens has a better feel for what the landscape across the country is.

**Chairman Klein:** Do you want to refresh my memory on what we did a few years ago relating to asbestos?

**Representative Koppelman:** I do recall that we dealt with some asbestos litigation and I was involved with that as well. It's been a long time ago but this is different. This has to do with people who are really sick, we want them to get compensated for that. If the companies have been negligent and if the plaintiffs have an asbestos caused illness and the courts say we better do something, we want them to receive compensation. What is happening now is there is double dipping going on. If you keep a jury in the dark and don't tell them what has already happened in another lawsuit with this same plaintiff and now we are looking at another company that may not have any direct involvement, that is really unfair and we are just saying that needs to be disclosed. It's a transparency bill and a bill that will avoid double dipping. (6:42-7:44)

**Chairman Klein:** And we want to make sure that those funds don't run out of money because we want to continue to take care of those folks.

**Senator Campbell:** What would keep these people from filing multiple claims anticipating that and try to get ahead of you and file all of them?

**Representative Koppelman:** I don't know how logistically those cases proceed but I think some of the other folks here that are attorneys can probably better talk about that.

**Mark Behrens, U.S. Chamber Institute for Legal Reform:** I had the privilege of travelling around the country and meeting with various legislatures and the other eight states that have already enacted this and there are bills pending in about another dozen states. One of the things I thought would be helpful to hand out is a trust claim form for the Manville Trust, so you can see basically what this legislation is all about. Manville had the biggest market share of selling asbestos and because of that, was the first company forced into bankruptcy. They go into bankruptcy, they reorganize and when they emerge from bankruptcy Manville Corp. is immune from future lawsuits but behind they leave a trust and so people that were injured by the former Manville products, the pre-bankruptcy Manville products, have a recourse. They go to the trust and they can file a claim. There are over one hundred companies that have been forced into bankruptcy because of asbestos lawsuits and many of those have trusts set up. Each of those have a separate trust for each individual company, they are approved by bankruptcy court but they are private trusts and privately managed. The plaintiff's lawyers are the trustees. Today we have over sixty different trust each representing a different bankrupt defendant and collectively this trust system holds about thirty-seven billion dollars to pay people injured by the major asbestos producers. It is very typical for plaintiffs to bring claims against multiple trusts because a worker may travel to different job sites and because of that over a career they would have exposure to a lots of different products at a lot of different sites. The average person will file twenty-two different trust claims and recover about six hundred thousand dollars. Separately plaintiffs have recourse to bring personal injury lawsuits for failure to warn against companies that are still solvent. There are over ten thousand companies that have been brought into the litigation. These companies were on the periphery of this litigation and when the major producers went bankrupt they became the target of litigation. Today plaintiffs have two separate avenues of recovery. They can go to the trusts and they can file a personal injury lawsuit. The system breaks down when the jury does not get full information about all the twenty-two exposures that are average people have. If the jury is lead to believe that the only exposures are to the defendants in the case, then they are not going to appropriately proportion fault where it would belong. What this legislation does is get more information to the juries and a lot of this is coming out now. This is not adding a new burden on the plaintiffs we are simply changing the timing, we are accelerating the timing of when these trust claims would ordinarily be filed. This is saying that a trust claim must be filed at the beginning of a tort case. Handout, Manville Personal Injury Settlement Trust, Proof of Claim form, see attachment #3. (8:48-18:00)

**Senator Roers:** What does the amendment do to help this bill be a better bill?

**Mark Behrens:** We believe the bill is fine but the Judge had a concern and he could better explain. The amendment simply provides one for a meet and confer rather than waste the courts time. This could be helpful but in my opinion is not needed because defendants frequently before they file a motion with the court and waste the courts time, they are going to call the other side and say we have a motion we want to file and this is the evidence, let's talk about this. Both sides have an interest in avoiding an appearance before the court to



deal with discovery disputes. In normal discovery disputes you would call the other side and talk it over, it has worked in other states. That is what the amendment would do is to say, before you file a motion you have to talk to the other side. (18:20-21:13)

**Chairman Klein:** What I am hearing then is that we would be unique with this amendment as opposed to what other states are doing?

**Mark Behrens:** I think one other state did this. What I am saying is I think it is unnecessary because typically before anybody goes to court the first thing you are going to do is call the other side and say, can we try and work this out.

**Chairman Klein:** In how we streamlined the bill, we are still good with what we have left, we can still have something we can be proud of what we are passing here in North Dakota?

**Mark Behrens:** Yes, I believe so. This would not prevent the court from ordering the parties to meet and confer before such a motion would be filed.

**Senator Campbell:** Would this promote a claimant to file blanket claims and can they file against any asbestos company or is each lawsuit specific for that manufacturer of asbestos? Can they only go after the ones that they worked in, a specific building or is this asbestos is asbestos and can go after any company?

**Mark Behrens:** This bill is just about access to information. If they had multiple exposures from different products that would have been made by different companies, they have the ability today to bring a claim against each individual trust. So if a worker works with different manufacturers products at different sites they could file a claim for each trust. The bill would certainly not prohibit that from happening before the lawsuit is filed. In fact, we would encourage that to happen. This is really just saying at least thirty days after the lawsuit is filed the claims all have to be in. If the plaintiff wants to file those before they file, the lawsuit they certainly can do that and frankly we would encourage that. When they bring the lawsuit anybody that is connected to asbestos can be brought in. A typical asbestos lawsuit may have a dozen or more defendants.

**Senator Casper:** Does this all happen in the state courts?

**Mark Behrens:** Yes, this is to govern the proceedings in the state courts.

**Senator Casper:** I understand that part but I am interested in the establishment of the trusts and that went to bankruptcy court and I assume that all originally was a class action?

**Mark Behrens:** They are not class actions because in class actions you typically have a small group of people suing on behalf of a bigger group. In toxic tort cases whether it is chemical exposure, or smoking or asbestos or pharmaceuticals, you don't have class action because each individual's exposure is going to be different. The type of diseases they may have may be different. These are all individual cases that come forward. The trust system was created by an operation of federal bankruptcy laws. There is a special provision of the federal bankruptcy code that just deals with asbestos.

**Senator Marcellais:** How is going to benefit our veterans?

**Mark Behrens:** It is going to benefit veterans in several ways. Most directly our experience is that they get their cases tried more quickly because this does streamline the discovery process. The other is by accelerating that to the beginning of the lawsuit instead of three years down the road, it is helping to insure that the veteran is going to see that money and be able to enjoy it with their family or with the time they have left.

**Andy Peterson, Greater North Dakota Chamber:** In support. Written testimony, see attachment #4. (30:40-34:33)

**Patrick Ward, Association of North Dakota Insurers:** In support. I do believe that the asbestos trusts are a good way to good and a good bill by requiring to put the asbestos trust claim filings first so we will have full disclosure for juries. Three letters handed out; National Association of Mutual Insurance Companies, see attachment #5, The American Legion, see attachment #6, and Texas Coalition of Veterans Organizations, see attachment #7. (35:00-37:43)

**Lacey Anderson, American Insurance Association:** In support.

**Chairman Klein:** Asked for opposition or neutral testimony.

**Judge John C. Irby, East Central District:** Neutral position. As a judge it's not our job to care who wins or loses but to get the cases through the process in a fair and equitable manner, treating all parties the same yet at the same time being able to get our cases through. We push the attorney hard to get these cases hard to get these done because we can't have these cases clogging it up. We have just nine judges and if there is a delay in the case and it gets sent down the road, what do we do with it. We try to get these case done in two years and we want to keep it that way. That is our concern, the procedural aspect of enforcement here, don't cause the courts a delay. (38:36-40:20)

**Chairman Klein:** We don't want to see a delay either and the idea here is to speed things up so the people can get the money that is coming to them in a quicker method.

**Judge John C. Irby:** Within sixty days the defendant can say, I think there was another trust that the plaintiff could have applied for here and they can bring that up and once that process gets going that can derail the trial date. Once that is done, we are off and trying to fill that hole up with the void left in the trial schedule but now where do we take this case with its seventy-five defendants and its multiple expert witnesses and plop it down. In the mean time we have other asbestos cases that have been scheduled.

**Chairman Klein:** If we didn't pass this legislation wouldn't you still have times when somebody would have brought this in after the fact?

**Judge John C. Irby:** That could come up in a discovery dispute but we are not mandated to delay the trial. It's you need to get it in or your case is dismissed. The part I was particularly concerned with is on page 4, line 3, number 5. (42:00-42:49)

**Senator Marcellais:** How many cases do we have pending in North Dakota?

**Judge John C. Irby:** I really don't know. I know that in 2015 there were sixteen cases filed in our district. In 2016 there were only five filed.

**David C. Thompson, P.C.:** Over in the House we reached an agreement with the proponents of the bill. I would concur with those propose amendments and with regard to the one point that Judge Irby referenced on page 4, line 3 sub 5 of that section. For the most part we wouldn't have a problem with that but the problem is this bill has an emergency clause on it. The average latency time for mesothelioma is 36.7 years from the time of first exposure. I would respectfully submit that the presiding Judge has the discretion to address the substance of this statute and make appropriate rulings but because of the emergency clause it would prevent a woman who isn't expected to live more than six to nine months from now, that would be a problem. This could be taken care of by either removing the emergency clause or by removing those two sentences. Mesothelioma is a real ugly disease and there is a time bomb in your body from about three decades from the time you are first exposed to it. It is a tumor of the pleura and there is no cure for it. (43:50-50:12)

**Senator Casper:** Everyone seems to be talking about lines 3 & 4 on page 4 as part of the amendment. I don't know if part of what we are doing here with the amendment is taking care of the issues with those lines that Judge Irby had but I don't see anything in the amendment that addresses page 4, lines 3 & 4.

**Representative Koppelman:** The Judge brought that up as we walked into the room so those two lines aren't in the amendment.

**Chairman Klein:** Asked Mark Behrens to address the emergency clause and whether or not that would be an issue for a client that Mr. Thompson may have.

**Mark C. Behrens:** I don't have a problem if you want to take out the emergency clause and have the bill take affect when it would regularly take effect. We could not support the amendment to strike the language that says that there would be a motion sixty days potentially before trial because our experience has been that that policing mechanism is the thing that makes sure it will never be used. If you take out that policing mechanism you take out what the bill is trying to accomplish and it could lead to more confusion in the case. (51:31-52:40)

**Chairman Klein:** I guess what we are going to do is have Senator Koppelman continue to work through the amendments and we will ask him to come back and explain if the amendments have addressed all the concerns. Closed the hearing.

# 2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

Engrossed HB 1197  
3/6/2017  
Job Number 28734

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Liebelt*

## Explanation or reason for introduction of bill/resolution:

Relating to asbestos bankruptcy trust transparency

## Minutes:

2 Attachments

**Chairman Klein:** Called the committee back to order. Let's go to 1197, the discussion on the asbestos trust claims. Cover Letter from Representative K. Koppelman, see attachment #1 and amendment 17.0403.04001, see attachment #2. There were a couple of concerns by Judge Irby and the removal of the emergency clause. The amendments have been seen by all the folks who have an interest here and they felt comfortable with the amendments.

**Senator Casper** moved to adopt the amendment, 17.0403.04001.

**Senator Campbell** seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-1

**Senator Casper** moved a do pass as amended.

**Senator Campbell** seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-1

**Senator Casper will carry the bill.**

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1197

Page 1, line 2, remove "; and to declare an emergency"

Page 3, line 16, replace "sixtieth" with "seventy-fifth"

Page 3, line 17, after the underscored period insert "The defendant shall produce or describe the documentation the defendant possesses or of which the defendant is aware in support of the motion. Before filing the motion, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional trust claim."

Page 4, line 18, remove "- Valuation of asbestos trust claims - Judicial notice"

Page 4, replace lines 19 through 27 with:

"At least thirty days before trial, the plaintiff shall provide the court with documentation identifying each claim the plaintiff has made against an asbestos trust. The court shall enter the documentation into the record."

Page 5, remove line 8

Renumber accordingly

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1197**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.0403.04001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Casper    Seconded By Senator Campbell

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	A				
Senator Casper	x				
Senator Poolman	x				

Total    (Yes) 6    No 0

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
*Representative K. Koppelman amendments*

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1197**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.0403.04001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Casper    Seconded By Senator Campbell

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	A				
Senator Casper	x				
Senator Poolman	x				

Total    (Yes) 6    No 0

Absent 1

Floor Assignment Senator Casper

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1197, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1197 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "; and to declare an emergency"

Page 3, line 16, replace "sixtieth" with "seventy-fifth"

Page 3, line 17, after the underscored period insert "The defendant shall produce or describe the documentation the defendant possesses or of which the defendant is aware in support of the motion. Before filing the motion, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional trust claim."

Page 4, line 18, remove "**- Valuation of asbestos trust claims - Judicial notice**"

Page 4, replace lines 19 through 27 with:

"At least thirty days before trial, the plaintiff shall provide the court with documentation identifying each claim the plaintiff has made against an asbestos trust. The court shall enter the documentation into the record."

Page 5, remove line 8

Renumber accordingly



**2017 TESTIMONY**

**HB 1197**

#1  
1197  
2-8-17

The legislation I am bringing to the committee today would help juries reach fully informed decisions when deciding fault in asbestos cases. Wrongdoers will continue to be held accountable.

Today, there are two separate and independent avenues for recovery for asbestos plaintiffs. People exposed to asbestos products in the past can bring claims against asbestos trusts that were created when the historically most culpable companies, the major asbestos producers, were forced into bankruptcy. There are over 60 different trusts in operation that collectively hold some \$36 billion in assets to pay people exposed to the products of those companies. Plaintiffs typically file claims against multiple trusts. One case found that the average plaintiff files 20 different trust claims and recovers about a half a million dollars from the various asbestos trusts. Plaintiffs also can bring civil lawsuits against companies that are still solvent. Many of these companies are newer defendants in the litigation or used to be minor players when the major asbestos producers were still in the tort system and able to be sued.

By manipulating the timing of when asbestos trust claims are filed and delaying the filing of these trust claims until after a tort case is resolved, juries are not able to hear evidence about all of a plaintiff's asbestos exposures. This bill simply requires plaintiffs to file those trust claims at the beginning of the case rather than after the case has concluded. It is not adding any new burdens on plaintiffs, just changing the timing of when they file their claims.

Similar legislation is now law in 8 states and is being considering in state legislatures around the country. The experience in other states is that cases move more quickly where these bills have passed. By requiring plaintiffs to file their trust claims earlier, plaintiffs also get paid more quickly, an important consideration for someone with mesothelioma.

The second part of this bill says you need to be sick to sue. By giving priority to cancer victims, the bills helps those plaintiffs get their cases heard more quickly. It also preserves assets of defendants for deserving claimants in the future rather than have those assets depleted today by people who are not sick. This part of the bill is also law in 8 states. The bill finds support in CSG Shared State Legislation and an NCOIL resolution supporting effective asbestos litigation reform.

#2  
1197  
2-8-17

# MANVILLE PERSONAL INJURY SETTLEMENT TRUST

2002 TDP

Proof of Claim Form

Submit Completed Claims to:

Claims Resolution Management Corporation  
3120 Fairview Park Drive, Suite 200  
Falls Church, VA 22042  
(703) 204-9300  
(800) 536-2722

Law Firm Administrative Contact  
for this Claim:

Name: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Title: \_\_\_\_\_  
E-mail address: \_\_\_\_\_  
Law Firm: \_\_\_\_\_

**PART 1: INJURED PARTY INFORMATION**

Name: \_\_\_\_\_  
                    First                                      Middle                                      Last                                      Jr. / Sr.

Social Security Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ OR

International Id: \_\_\_\_\_ (Required for Foreign Claims)

Gender: (check box)     Male  
                                   Female

Date Of Birth: \_\_\_\_\_  
                                  (MM/DD/YYYY)

**If injured party is LIVING**

Mailing Address \_\_\_\_\_  
                                  Street Address  
                                  \_\_\_\_\_  
                                  City, State (Province), Zip Code (Postal Code), Country  
Daytime Telephone: \_\_\_\_\_ - \_\_\_\_\_  
                                  Area Code  
E-mail Address: \_\_\_\_\_

**If injured party is DECEASED**

Date of Death: \_\_\_\_\_  
                                  (MM/DD/YYYY)

Personal Representative Name (if injured party is deceased or is living and has a person, other than filing attorney, filing on his/her behalf):

Name: \_\_\_\_\_  
                    First                                      Middle                                      Last                                      Jr. / Sr.

Mailing Address \_\_\_\_\_  
                                  Street Address  
                                  \_\_\_\_\_  
                                  City, State (Province), Zip Code (Postal Code), Country  
Daytime Telephone: \_\_\_\_\_ - \_\_\_\_\_  
                                  Area Code  
E-mail Address: \_\_\_\_\_

**PART 2: LAW FIRM/ATTORNEY INFORMATION**

**IF AN ATTORNEY IS REPRESENTING THIS INJURED PARTY, COMPLETE THIS SECTION:**

Tax ID #: \_\_\_\_\_ Internet Address: \_\_\_\_\_

Law Firm Name: \_\_\_\_\_

Attorney Assigned: \_\_\_\_\_

Telephone: \_\_\_\_\_ - \_\_\_\_\_ Fax: \_\_\_\_\_ - \_\_\_\_\_  
Area Code Area Code

**Mailing Address  
For Claim-Related  
Correspondence:**

\_\_\_\_\_  
*Street Address*  
\_\_\_\_\_  
*City, State (Province), Zip Code (Postal Code) Country*

**IF THERE IS CO-COUNSEL, COMPLETE THIS SECTION:**

Tax ID #: \_\_\_\_\_ Internet Address: \_\_\_\_\_

Law Firm Name: \_\_\_\_\_

Attorney Assigned: \_\_\_\_\_

Telephone: \_\_\_\_\_ - \_\_\_\_\_ Fax: \_\_\_\_\_ - \_\_\_\_\_  
Area Code Area Code

**Mailing Address  
For Claim-Related  
Correspondence:**

\_\_\_\_\_  
*Street Address*  
\_\_\_\_\_  
*City, State (Province), Zip Code (Postal Code) Country*

### PART 3: LITIGATION

Has any asbestos-related lawsuit been filed on behalf of this injured party?  
(check one)

YES (give earliest date filed, and name of State or Country)  NO

\_\_\_\_\_  
Month      Year      State      Country

### PART 4: EXPOSURE TO MANVILLE ASBESTOS

To qualify for any Disease Level, the claimant must demonstrate a minimum exposure to an asbestos-containing Manville product prior to December 31, 1982 together with additional asbestos exposure requirements where applicable.

#### EXPOSURE HISTORY

The following definitions must be used to indicate how exposure was obtained for each period of employment. As used here, on a "regular basis" means every workday for a substantial part of the workday.

- (i) handled raw asbestos fibers on a regular basis
- (ii) fabricated asbestos containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers
- (iii) altered, repaired or otherwise worked with an asbestos containing product such that the claimant was exposed on a regular basis to asbestos fibers
- (iv) was employed in an industry and occupation such that the claimant worked on a regular basis within 10-20 feet of workers engaged in the activities described in (i), (ii) and or (iii)
- (v) Exposed other than by (i), (ii), (iii) or (iv)

Completing **Part A** of this section is necessary only when the claimant is alleging an asbestos-related disease resulting from exposure to an occupationally-exposed person. In other words, exposure to asbestos was secondary as in the case of a family member.

**Completing Part B of this section is mandatory.** It reflects all periods of exposure to asbestos by an occupationally, or directly, exposed person. If Part A is completed, Part B must contain the exposure information of the individual that was occupationally, or directly, exposed to the asbestos product(s).

When indicating product and occupations, use the codes listed on pages 8 and 9.

**1. Part A: Bystander – secondary exposure including family member.**

Enter the dates that you were exposed to the occupationally exposed person (the other person):

**From:** \_\_\_\_\_ **To:** \_\_\_\_\_  
Month Year Month Year

Provide the name of the occupationally-exposed person and his / her relationship to you:

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Relationship: (check box)  Family  Tenant, boarder, roommate  
 Laundry customer  Other

**1. Part B: Occupational exposure - MANDATORY.** This section must be completed describing all periods of asbestos exposure of the occupationally, or directly, exposed person. Product and occupation codes are listed on pages 8 and 9.

**From:** \_\_\_\_\_ **To:** \_\_\_\_\_  
Month Year Month Year

Occupation Code: \_\_\_\_\_ Industry Code: \_\_\_\_\_

Exposure Site: \_\_\_\_\_

Name of Plant or Site

\_\_\_\_\_ State

\_\_\_\_\_ Country

If the country of exposure is other than the US or Canada please answer the following:

Did this exposure occur at a U.S. military installation, U.S. Embassy complex or on a U.S. Military Ship? \_\_\_\_\_ (YES) \_\_\_\_\_ (NO)

Check the category that best describes the exposure of the injured party:

- \_\_\_\_\_ (i) Handled raw asbestos fibers on a regular basis  
\_\_\_\_\_ (ii) Fabricated asbestos-containing products so that he / she was exposed on a regular basis to raw asbestos fibers

- \_\_\_\_\_ (iii) Altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers
- \_\_\_\_\_ (iv) Was employed in an occupation such that the claimant worked on a regular basis in proximity of workers engaged in the activities described in (i), (ii) and/or (iii)
- \_\_\_\_\_ (v) Exposed other than by (i), (ii), (iii) or (iv)

If category (iv) or (v) was checked for exposure:

Check the category that best describes the exposure of occupationally-exposed co-worker(s) in proximity:

- \_\_\_\_\_ (i) Handled raw asbestos fibers on a regular basis
- \_\_\_\_\_ (ii) Fabricated asbestos-containing products so that he / she was exposed on a regular basis to raw asbestos fibers
- \_\_\_\_\_ (iii) Altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers

List the occupation code(s) of occupationally-exposed co-worker(s) in proximity.

Occupation Code(s): \_\_\_\_\_

**Additional Exposure pages follow, if needed. Complete one page for each exposure.**

**1. Part A: Bystander – secondary exposure including family member.**

Enter the dates that you were exposed to the occupationally exposed person (the other person):

**From:** \_\_\_\_\_ **To:** \_\_\_\_\_  
 Month Year Month Year

Provide the name of the occupationally-exposed person and his / her relationship to you:

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Relationship: (check box)  Family  Tenant, boarder, roommate  
 Laundry customer  Other



**1. Part B: Occupational exposure - MANDATORY.** This section must be completed describing all periods of asbestos exposure of the occupationally, or directly, exposed person. Product and occupation codes are listed on pages 8 and 9.

**From:** \_\_\_\_\_ **To:** \_\_\_\_\_  
Month Year Month Year  
Occupation Code: \_\_\_\_\_ Industry Code: \_\_\_\_\_

Exposure Site: \_\_\_\_\_  
Name of Plant or Site  
\_\_\_\_\_  
State Country

If the country of exposure is other than the US or Canada please answer the following:

Did this exposure occur at a U.S. military installation, U.S. Embassy complex or on a U.S. Military Ship? \_\_\_\_\_ (YES) \_\_\_\_\_ (NO)

Check the category that best describes the exposure of the injured party:

- \_\_\_\_\_ (i) Handled raw asbestos fibers on a regular basis
- \_\_\_\_\_ (ii) Fabricated asbestos-containing products so that he / she was exposed on a regular basis to raw asbestos fibers
- \_\_\_\_\_ (iii) Altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers
- \_\_\_\_\_ (iv) Was employed in an occupation such that the claimant worked on a regular basis in proximity of workers engaged in the activities described in (i), (ii) and/or (iii)
- \_\_\_\_\_ (v) Exposed other than by (i), (ii), (iii) or (iv)

If category (iv) or (v) was checked for exposure:

Check the category that best describes the exposure of occupationally-exposed co-worker(s) in proximity:

- \_\_\_\_\_ (i) Handled raw asbestos fibers on a regular basis
- \_\_\_\_\_ (ii) Fabricated asbestos-containing products so that he / she was exposed on a regular basis to raw asbestos fibers

\_\_\_\_\_ (iii) Altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers

List the occupation code(s) of occupationally-exposed co-worker(s) in proximity.

Occupation Code(s): \_\_\_\_\_

**Attach additional pages if needed.**

### Occupation Codes

- |  |   |
|--|---|
| 01. Air Conditioning & Heating<br>Installer, Maintenance | 23. Heavy Equipment Operator                              |
| 03. Asbestos Miner, Asbestos<br>Plant Worker             | 63. Hostler   |
| 04. Asbestos Removal Worker                              | 02. Insulation  |
| 60. Baker  | 53. Longshoreman  |
| 12. Brake Maker  | 64. Machine Operator                                      |
| 13. Brick Masons, Layer & Hod Carrier                    | 26. Machinists  |
| 09. Boiler Worker, Repair                                | 10. Maintenance Worker                                    |
| 61. Butcher & Meat Cutter                                | 06. Mechanic  |
| 51. Bystander (Including Family<br>Member)               | 27. Millwright  |
| 15. Carpenter  | 50. Office Worker   |
| 55. Chipper  | 28. Painter   |
| 67. Construction Laborer                                 | 30. Pipe fitter, Steamfitter plumber &<br>Helper          |
| 18. Custodian  | 31. Plasterer & Sheet-Rock Installer                      |
| 19. Electrician  | 11. Railroad, Brakeman, Carman,<br>Conductor, and Laborer |
| 20. Engineer   | 34. Rigger  |
| 76. Environmental Bystander                              | 35. Sandblaster   |
| 05. Factory Worker (Assembly Line)                       | 33. Seaman (Engine Room)                                  |
| 59. Factory Worker (Non-Assembly<br>Line)                | 36. Seaman (Non-Engine Room)                              |
| 21. Fire Fighters  | 37. Sheet Metal Worker                                    |
| 22. Furnace Worker, Installer &<br>Maintenance           | 39. Ship fitter   |
| 52. Glass Worker   | 38. Shipwright  |
| 56. Grinder  | 65. Shipyard Laborer                                      |
| 57. Hazardous Materials Removal                          | 54. Steel, Foundry, Aluminum Worker                       |
| 62. Heat Treating Equipment Operator                     | 40. Warehouse Worker                                      |
|  | 08. Welder  |
|  | 66. Well Pullers  |

## Industry Codes

- |  |   |
|--|---|
| 102. Asbestos Abatement  | 111. Military   |
| 104. Automotive Dealers, Repair Services and Stations            | 134. Mining and Quarrying Nonmetallic Minerals Except Fuels       |
| 106. Chemicals and Allied Products                               | 116. Munitions Plant  |
| 107. Construction Trade  | 125. Non-Manville Asbestos Manufacturing and Mining               |
| 123. Electric, Gas, Sanitary and Telephone Services              | 135. Oil and Gas Extraction                                       |
| 127. Electronic Equipment and Components                         | 118. Paper and Allied Products                                    |
| 002. Environmental Bystander                                     | 114. Petroleum and Related Industries                             |
| 128. Food and Kindred Products                                   | 136. Pipelines (Except Natural Gas)                               |
| 129. Government, Municipalities and Schools                      | 108. Primary Metal Industries                                     |
| 130. Industrial and Commercial Machinery and Computer Equipment  | 137. Printing and Publishing Industries                           |
| 131. Local and Suburban Transit and Interurban Highway Passenger | 117. Railroad Transportation                                      |
| 109. Longshore   | 122. Rubber and Miscellaneous Products                            |
| 124. Manville Asbestos Manufacturing and Mining                  | 120. Shipyard (Construction, Repair of Ships)                     |
| 110. Maritime  | 112. Stone, Clay, Glass and Concrete Products                     |
| 132. Measuring, Analyzing and Controlling Instruments            | 121. Textile Mill Products  |
| 133. Metal Mining  | 138. Tobacco Products   |
|  | 101. Transportation Equipment (Including Automobile and Aircraft) |
|  | 139. Water Transportation   |



**PART 7: SIGNATURE**

**All claims must be signed by the injured party or the person filing on his/her behalf. If the claimant is represented by counsel, counsel must also sign. Facsimile signatures are acceptable.**

**By signing the POC form you are certifying that all representations you have made are true and accurate.**

---

SIGNATURE OF INJURED PARTY OR PERSONAL REPRESENTATIVE

---

PLEASE PRINT THE NAME AND RELATIONSHIP TO THE INJURED PARTY OF THE SIGNATORY ABOVE

---

SIGNATURE OF COUNSEL

**Testimony of Andy Peterson  
Greater North Dakota Chamber  
House Judiciary Committee  
Kim Koppelman - Chair  
HB 1197  
February 8, 2017**

Mr. Chairman and members of the committee, my name is Andy Peterson and I am here today representing the Greater North Dakota Chamber, local chambers of commerce, and other business associations throughout North Dakota. Some members of the media describe the GNDC as the most prominent business organization in North Dakota. We stand for economic freedom and free enterprise. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, and local chambers of commerce. As a group we stand in support to HB 1197 and urge a "Do Pass" from the committee on this bill.

As far as I can tell, the bill provides transparency and cleans up some of the mishandlings of asbestos/silica claims which have taken place in the United States. What this bill does not do is prohibit plaintiffs from rightfully collecting damages when they have, in fact, experienced injury. There are many things we like about the bill.

First, the bill provides transparency. By requiring plaintiffs to disclose all pending and potential claims a more accurate picture can emerge in both trust claiming and civil litigation. In other words, a more accurate history is presented and a fully informed jury can more accurately assign fault. Moreover, it likely will stop or slow "double dipping" wherein claimants file trust claims after litigation and trial. Nobody wants to stop claimants from receiving damages, and most want an open and fair process in the long road to settling these claims.

Secondly, we support verification and process before payment. In other words a claimant must be diagnosed and have signed reports from credible and qualified physicians who have had a doctor-patient relationship with the exposed person before the judicial process can move forward. Let me give you a personal example wherein this may have been useful; my recently deceased father-in-law spent time in the navy during the Korean conflict. In the last few months of his life he experienced weakness and had trouble breathing.

#3



The Veterans Administration, from which he received his health care, quickly assumed his problems were due to asbestos exposure from his time aboard ship. Probably not a bad guess. However, his problems were quickly diagnosed in a civilian hospital as Guillain-Barre Syndrome that claimed his life shortly thereafter. In this case he was sick but verification of illness should have happened before the assumption was made that he was suffering from an asbestos related disorder. Again, I wouldn't have wanted to prohibit my father-in-law from a settlement. However, it is an example wherein a proper diagnosis would have eliminated unnecessary anxiety on the part of the claimant, the claimant's family, and potentially those responsible to make claimants whole. Again, verification before action is best.

Let me conclude by saying we support compensation for those sickened by asbestos/silica. However, that compensation ought to come with transparency, diagnosis, and with a lack of double dipping which would make the process fairer to all concerned.

Again, please give HB 1197 a "Do Pass."



PO Box 2639 P: 701-222-0929  
Bismarck, ND 58502 F: 701-222-1611

[www.ndchamber.com](http://www.ndchamber.com)

2



3601 Vincennes Road, Indianapolis, Indiana 46268  
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001  
Phone: 202.628.1558 | Fax: 202.628.1601

2-8-17

February 8, 2017

The Honorable Bill Koppelman  
Chairman, House Judiciary Committee  
Prairie Hearing Room, State Capitol Building  
600 East Boulevard  
Bismarck, North Dakota 58505

Re: Letter in Support of HB 1197 – February 8, 2017 Hearing

Dear Chairman Koppelman and Committee Members:

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty trade association in the country, with 1,400 regional and local mutual insurance member companies serving more than 135 million auto, home, and business policyholders and writing in excess of \$196 billion in annual premiums. More than 200,000 people are employed by NAMIC member companies. In North Dakota, we have 163 member companies, including 18 domiciled companies, which underwrite 48% of the state's insurance.

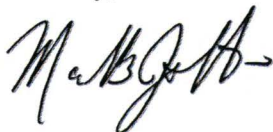
Asbestos trust funds were created after decades of litigation and bankruptcies in order to fund care for asbestos victims. Independent studies have concluded, however, that the trust system is susceptible to abuse. There is evidence that some are filing claims with multiple trusts as well as lawsuits against others that contain contradictory allegations of liability.

HB 1197 will provide transparency, and thereby reduce fraud, in asbestos litigation by increasing access to relevant, necessary information about claims made with the asbestos trust funds. It is important to stress that nothing in this bill takes away the plaintiff's remedies against those who are responsible.

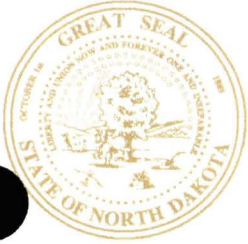
Further, it must be remembered that the abusive filings of some drain resources needed to aid victims who have yet to be compensated.

NAMIC appreciates your attention to this issue. If you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely,



Mark Johnston  
Director of State Affairs – Midwest Region



## North Dakota House of Representatives

State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0360

Representative  
Kim Koppelman  
District 13  
513 First Avenue NW  
West Fargo, ND 58078-1101

Residence: 701-282-9267  
Business: 701-492-7317  
Fax: 701-282-9267

kkoppelman@nd.gov

Committees:  
Judiciary, Chairman  
Local Subdivisions

Testimony on House Bill 1197

Senate Industry, Business and Labor Committee

3-1-17

Good Morning, Mr. Chairman and Members of the Committee. For the record, I am Rep. Kim Koppelman. I represent District 13 in West Fargo and chair the Judiciary Committee in the House. It's good to be with you today to testify in favor of House Bill 1197.

This Legislation would help juries reach fully informed decisions when deciding fault in asbestos cases. Wrongdoers will continue to be held accountable.

Today, there are two separate and independent avenues for recovery for asbestos plaintiffs. People exposed to asbestos products in the past can bring claims against asbestos trusts that were created when the historically most culpable companies, the major asbestos producers, were forced into bankruptcy. There are over 60 different trusts in operation that collectively hold some \$36 billion in assets to pay people exposed to the products of those companies. Plaintiffs typically file claims against multiple trusts. One case found that the average plaintiff files 20 different trust claims and recovers about a half a million dollars from the various asbestos trusts. Plaintiffs also can bring civil lawsuits against companies that are still solvent. Many of these companies are newer defendants in the litigation or used to be minor players when the major asbestos producers were still in the tort system and able to be sued.

By manipulating the timing of when asbestos trust claims are filed and delaying the filing of these trust claims until after a tort case is resolved, juries are not able to hear evidence about all of a plaintiff's asbestos exposures. This bill simply requires plaintiffs to file those trust claims at the beginning of the case rather than after the case has concluded. It is not adding any new burdens on plaintiffs, just changing the timing of when they file their claims.

Similar legislation is now law in 8 states and is being considering in state legislatures around the country. The experience in other states is that cases move more quickly where these bills have passed. By requiring plaintiffs to file their trust claims earlier, plaintiffs also get paid more quickly, an important consideration for someone who is ill.

The legislation originally was much longer and had a second part that dealt with an entirely different issue in the asbestos litigation. The second half of the original bill was deleted by amendment in the House Judiciary Committee and all the interested parties agreed that it was a good compromise and supported the bill. THERE WAS NO OPPOSITION to the Amended bill. The bill was reported out of the House Judiciary Committee with a unanimous 15-0 DO PASS recommendation and was voted out of the House by a vote of 82-6. I urge your Committee to give HB 1197 a "Do Pass" recommendation and thank you for your time and attention.

AMENDMENTS TO ENGROSSED H.B. 1197

1) Page 3 line 16, replace "sixtieth" with "seventy-fifth".

1) Page 3 line 17, add at the end the following: "The defendant shall produce or describe the documentation it possesses or is aware of in support of the motion. Before filing the motion, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional trust claim".

E.G.

1. A defendant may file a motion requesting a stay of the proceedings by the later of the seventy-fifth ~~sixtieth~~ day before the trial is set to commence or the fifteenth day after the defendant first obtains information supporting additional trust claims by the plaintiff. The defendant shall produce or describe the documentation it possesses or is aware of in support of the motion. Before filing the motion, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional trust claim.

2) Page 4 line 18 - strike "Valuation of asbestos trust claims – Judicial notice"

E.G.

Trust record – Valuation of asbestos trust claims – Judicial notice.

3) Page 4 line 19 - strike "1. The court shall identify every asbestos trust claim made by the plaintiff at least thirty days before trial" and insert "At least thirty days before trial, the plaintiff shall provide the court with a document identifying each claim the plaintiff has made against an asbestos trust. The court shall enter the document into the record".

E.G.

1. The court shall identify every asbestos trust claim made by the plaintiff at least thirty days before trial. At least thirty days before trial, the plaintiff shall provide the court with a document identifying each claim the plaintiff has made against an asbestos trust. The court shall enter the document into the record.

4) Page 4 lines 21 through 27 – strike all

E.G.

- ~~2. If a plaintiff proceeds to trial before an asbestos trust claim is resolved, there is a rebuttable presumption that the plaintiff is entitled to and will receive the compensation specified in the trust governance document applicable to the claim at the time of the trial.~~
- ~~3. The court shall take judicial notice that the trust governance document specifies compensation amounts and payment percentages and establish an attributed value to the plaintiff's asbestos trust claims. Failure to provide information – Sanctions~~

# MANVILLE PERSONAL INJURY SETTLEMENT TRUST

2002 TDP

Proof of Claim Form

Submit Completed Claims to:

Claims Resolution Management Corporation  
3120 Fairview Park Drive, Suite 200  
Falls Church, VA 22042  
(703) 204-9300  
(800) 536-2722

Law Firm Administrative Contact  
for this Claim:

Name: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Title: \_\_\_\_\_  
E-mail address: \_\_\_\_\_  
Law Firm: \_\_\_\_\_

**PART 1: INJURED PARTY INFORMATION**

Name: \_\_\_\_\_  
First Middle Last Jr. / Sr.

Social Security Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ OR

International Id: \_\_\_\_\_ (Required for Foreign Claims)

Gender: (check box)  Male  
 Female

Date Of Birth: \_\_\_\_\_  
(MM/DD/YYYY)

**If injured party is LIVING**

Mailing Address \_\_\_\_\_  
Street Address \_\_\_\_\_  
City, State (Province), Zip Code (Postal Code), Country \_\_\_\_\_  
Daytime Telephone: \_\_\_\_\_ - \_\_\_\_\_  
Area Code \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

**If injured party is DECEASED**

Date of Death: \_\_\_\_\_  
(MM/DD/YYYY)

Personal Representative Name (if injured party is deceased or is living and has a person, other than filing attorney, filing on his/her behalf):

Name: \_\_\_\_\_  
First Middle Last Jr. / Sr.

Mailing Address \_\_\_\_\_  
Street Address \_\_\_\_\_  
City, State (Province), Zip Code (Postal Code), Country \_\_\_\_\_  
Daytime Telephone: \_\_\_\_\_ - \_\_\_\_\_  
Area Code \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

**PART 2: LAW FIRM/ATTORNEY INFORMATION**

**IF AN ATTORNEY IS REPRESENTING THIS INJURED PARTY, COMPLETE THIS SECTION:**

Tax ID #: \_\_\_\_\_ Internet Address: \_\_\_\_\_

Law Firm Name: \_\_\_\_\_

Attorney Assigned: \_\_\_\_\_

Telephone: \_\_\_\_\_ - \_\_\_\_\_ Fax: \_\_\_\_\_ - \_\_\_\_\_  
Area Code Area Code

**Mailing Address  
For Claim-Related  
Correspondence:**

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City, State (Province), Zip Code (Postal Code) Country*

**IF THERE IS CO-COUNSEL, COMPLETE THIS SECTION:**

Tax ID #: \_\_\_\_\_ Internet Address: \_\_\_\_\_

Law Firm Name: \_\_\_\_\_

Attorney Assigned: \_\_\_\_\_

Telephone: \_\_\_\_\_ - \_\_\_\_\_ Fax: \_\_\_\_\_ - \_\_\_\_\_  
Area Code Area Code

**Mailing Address  
For Claim-Related  
Correspondence:**

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City, State (Province), Zip Code (Postal Code) Country*

**PART 3: LITIGATION**

Has any asbestos-related lawsuit been filed on behalf of this injured party?  
(check one)

YES (give earliest date filed, and name of State or Country)  NO

\_\_\_\_\_  
Month      Year      State      Country

**PART 4: EXPOSURE TO MANVILLE ASBESTOS**

To qualify for any Disease Level, the claimant must demonstrate a minimum exposure to an asbestos-containing Manville product prior to December 31, 1982 together with additional asbestos exposure requirements where applicable.

**EXPOSURE HISTORY**

The following definitions must be used to indicate how exposure was obtained for each period of employment. As used here, on a "regular basis" means every workday for a substantial part of the workday.

- (i) handled raw asbestos fibers on a regular basis
- (ii) fabricated asbestos containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers
- (iii) altered, repaired or otherwise worked with an asbestos containing product such that the claimant was exposed on a regular basis to asbestos fibers
- (iv) was employed in an industry and occupation such that the claimant worked on a regular basis within 10-20 feet of workers engaged in the activities described in (i), (ii) and or (iii)
- (v) Exposed other than by (i), (ii), (iii) or (iv)

Completing **Part A** of this section is necessary only when the claimant is alleging an asbestos-related disease resulting from exposure to an occupationally-exposed person. In other words, exposure to asbestos was secondary as in the case of a family member.

**Completing Part B of this section is mandatory.** It reflects all periods of exposure to asbestos by an occupationally, or directly, exposed person. If Part A is completed, Part B must contain the exposure information of the individual that was occupationally, or directly, exposed to the asbestos product(s).

When indicating product and occupations, use the codes listed on pages 8 and 9.



**1. Part A: Bystander – secondary exposure including family member.**

Enter the dates that you were exposed to the occupationally exposed person (the other person):

**From:** \_\_\_\_\_ **To:** \_\_\_\_\_  
Month Year Month Year

Provide the name of the occupationally-exposed person and his / her relationship to you:

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Relationship: (check box)  Family  Tenant, boarder, roommate  
 Laundry customer  Other

**1. Part B: Occupational exposure - MANDATORY.** This section must be completed describing all periods of asbestos exposure of the occupationally, or directly, exposed person. Product and occupation codes are listed on pages 8 and 9.

**From:** \_\_\_\_\_ **To:** \_\_\_\_\_  
Month Year Month Year

Occupation Code: \_\_\_\_\_ Industry Code: \_\_\_\_\_

Exposure Site: \_\_\_\_\_  
Name of Plant or Site  
\_\_\_\_\_  
State Country

If the country of exposure is other than the US or Canada please answer the following:

Did this exposure occur at a U.S. military installation, U.S. Embassy complex or on a U.S. Military Ship? \_\_\_\_\_(YES) \_\_\_\_\_(NO)

Check the category that best describes the exposure of the injured party:

- \_\_\_\_\_ (i) Handled raw asbestos fibers on a regular basis
- \_\_\_\_\_ (ii) Fabricated asbestos-containing products so that he / she was exposed on a regular basis to raw asbestos fibers

- \_\_\_\_\_ (iii) Altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers
- \_\_\_\_\_ (iv) Was employed in an occupation such that the claimant worked on a regular basis in proximity of workers engaged in the activities described in (i), (ii) and/or (iii)
- \_\_\_\_\_ (v) Exposed other than by (i), (ii), (iii) or (iv)

If category (iv) or (v) was checked for exposure:

Check the category that best describes the exposure of occupationally-exposed co-worker(s) in proximity:

- \_\_\_\_\_ (i) Handled raw asbestos fibers on a regular basis
- \_\_\_\_\_ (ii) Fabricated asbestos-containing products so that he / she was exposed on a regular basis to raw asbestos fibers
- \_\_\_\_\_ (iii) Altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers

List the occupation code(s) of occupationally-exposed co-worker(s) in proximity.

Occupation Code(s): \_\_\_\_\_

**Additional Exposure pages follow, if needed. Complete one page for each exposure.**

**1. Part A: Bystander – secondary exposure including family member.**

Enter the dates that you were exposed to the occupationally exposed person (the other person):

**From:** \_\_\_\_\_ **To:** \_\_\_\_\_  
Month Year Month Year

Provide the name of the occupationally-exposed person and his / her relationship to you:

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

- Relationship: (check box)
- Family  Tenant, boarder, roommate
  - Laundry customer  Other

**1. Part B: Occupational exposure - MANDATORY.** This section must be completed describing all periods of asbestos exposure of the occupationally, or directly, exposed person. Product and occupation codes are listed on pages 8 and 9.

**From:** \_\_\_\_\_ **To:** \_\_\_\_\_  
 Month Year Month Year  
 Occupation Code: \_\_\_\_\_ Industry Code: \_\_\_\_\_

Exposure Site: \_\_\_\_\_  
 Name of Plant or Site  
 \_\_\_\_\_  
 State Country

If the country of exposure is other than the US or Canada please answer the following:

Did this exposure occur at a U.S. military installation, U.S. Embassy complex or on a U.S. Military Ship? \_\_\_\_\_(YES) \_\_\_\_\_(NO)

Check the category that best describes the exposure of the injured party:

- \_\_\_\_\_ (i) Handled raw asbestos fibers on a regular basis
- \_\_\_\_\_ (ii) Fabricated asbestos-containing products so that he / she was exposed on a regular basis to raw asbestos fibers
- \_\_\_\_\_ (iii) Altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers
- \_\_\_\_\_ (iv) Was employed in an occupation such that the claimant worked on a regular basis in proximity of workers engaged in the activities described in (i), (ii) and/or (iii)
- \_\_\_\_\_ (v) Exposed other than by (i), (ii), (iii) or (iv)

If category (iv) or (v) was checked for exposure:

Check the category that best describes the exposure of occupationally-exposed co-worker(s) in proximity:

- \_\_\_\_\_ (i) Handled raw asbestos fibers on a regular basis
- \_\_\_\_\_ (ii) Fabricated asbestos-containing products so that he / she was exposed on a regular basis to raw asbestos fibers

\_\_\_\_\_ (iii) Altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers

List the occupation code(s) of occupationally-exposed co-worker(s) in proximity.

Occupation Code(s): \_\_\_\_\_

**Attach additional pages if needed.**

## Occupation Codes

- |  |   |
|--|---|
| 01. Air Conditioning & Heating<br>Installer, Maintenance | 23. Heavy Equipment Operator                              |
| 03. Asbestos Miner, Asbestos<br>Plant Worker             | 63. Hostler   |
| 04. Asbestos Removal Worker                              | 02. Insulation  |
| 60. Baker  | 53. Longshoreman  |
| 12. Brake Maker  | 64. Machine Operator                                      |
| 13. Brick Masons, Layer & Hod Carrier                    | 26. Machinists  |
| 09. Boiler Worker, Repair                                | 10. Maintenance Worker                                    |
| 61. Butcher & Meat Cutter                                | 06. Mechanic  |
| 51. Bystander (Including Family<br>Member)               | 27. Millwright  |
| 15. Carpenter  | 50. Office Worker   |
| 55. Chipper  | 28. Painter   |
| 67. Construction Laborer                                 | 30. Pipe fitter, Steamfitter plumber &<br>Helper          |
| 18. Custodian  | 31. Plasterer & Sheet-Rock Installer                      |
| 19. Electrician  | 11. Railroad, Brakeman, Carman,<br>Conductor, and Laborer |
| 20. Engineer   | 34. Rigger  |
| 76. Environmental Bystander                              | 35. Sandblaster   |
| 05. Factory Worker (Assembly Line)                       | 33. Seaman (Engine Room)                                  |
| 59. Factory Worker (Non-Assembly<br>Line)                | 36. Seaman (Non-Engine Room)                              |
| 21. Fire Fighters  | 37. Sheet Metal Worker                                    |
| 22. Furnace Worker, Installer &<br>Maintenance           | 39. Ship fitter   |
| 52. Glass Worker   | 38. Shipwright  |
| 56. Grinder  | 65. Shipyard Laborer                                      |
| 57. Hazardous Materials Removal                          | 54. Steel, Foundry, Aluminum Worker                       |
| 62. Heat Treating Equipment Operator                     | 40. Warehouse Worker                                      |
|  | 08. Welder  |
|  | 66. Well Pullers  |

**Industry Codes**

- |  |   |
|--|---|
| 102. Asbestos Abatement  | 111. Military   |
| 104. Automotive Dealers, Repair Services and Stations            | 134. Mining and Quarrying Nonmetallic Minerals Except Fuels       |
| 106. Chemicals and Allied Products                               | 116. Munitions Plant  |
| 107. Construction Trade  | 125. Non-Manville Asbestos Manufacturing and Mining               |
| 123. Electric, Gas, Sanitary and Telephone Services              | 135. Oil and Gas Extraction                                       |
| 127. Electronic Equipment and Components                         | 118. Paper and Allied Products                                    |
| 002. Environmental Bystander                                     | 114. Petroleum and Related Industries                             |
| 128. Food and Kindred Products                                   | 136. Pipelines (Except Natural Gas)                               |
| 129. Government, Municipalities and Schools                      | 108. Primary Metal Industries                                     |
| 130. Industrial and Commercial Machinery and Computer Equipment  | 137. Printing and Publishing Industries                           |
| 131. Local and Suburban Transit and Interurban Highway Passenger | 117. Railroad Transportation                                      |
| 109. Longshore   | 122. Rubber and Miscellaneous Products                            |
| 124. Manville Asbestos Manufacturing and Mining                  | 120. Shipyard (Construction, Repair of Ships)                     |
| 110. Maritime  | 112. Stone, Clay, Glass and Concrete Products                     |
| 132. Measuring, Analyzing and Controlling Instruments            | 121. Textile Mill Products  |
| 133. Metal Mining  | 138. Tobacco Products   |
|  | 101. Transportation Equipment (Including Automobile and Aircraft) |
|  | 139. Water Transportation   |

**PART 5: ASBESTOS-RELATED INJURY**

**DIAGNOSED INJURIES:**

Place a check next to all injuries below that have been, or were, diagnosed for this injured Party AND for which medical documentation is attached.

- Other Asbestos Disease (Level I)**                       **Lung Cancer (One) (Level VI)**
- Asbestosis/Pleural Disease (Level II)**                       **\* Lung Cancer (Two) (Level VII)**
- \* Asbestosis/Pleural Disease (Level III)**                       **Mesothelioma (Level VIII)**
- \* Severe Asbestosis (Level IV)**
- \* Other Cancer (Level V)**
  - Colorectal
  - Laryngeal
  - Esophageal
  - Pharyngeal
  - Stomach Cancer

\* AN ASTERISK INDICATES THAT THE DISEASE LEVEL REQUIRES SOE. Make certain that the claimant meets SOE requirements. If you are requesting site approval, you must contact the CRMC Verification Coordinator prior to submitting your claim.

**PART 6: SMOKING HISTORY**

**This section is to be completed ONLY when you have alleged a Level VI or VII.**

Has the injured party ever smoked cigarettes? (circle one)    YES    NO    UNKNOWN

If Yes, is the injured party a current smoker?                      YES    NO

If No, what year did the injured party quit smoking?                      \_\_\_\_\_  
Year

**PART 7: SIGNATURE**

**All claims must be signed by the injured party or the person filing on his/her behalf. If the claimant is represented by counsel, counsel must also sign. Facsimile signatures are acceptable.**

**By signing the POC form you are certifying that all representations you have made are true and accurate.**

\_\_\_\_\_  
SIGNATURE OF INJURED PARTY OR PERSONAL REPRESENTATIVE

\_\_\_\_\_  
PLEASE PRINT THE NAME AND RELATIONSHIP TO THE INJURED PARTY OF THE SIGNATORY ABOVE

\_\_\_\_\_  
SIGNATURE OF COUNSEL





**Testimony of Andy Peterson  
Greater North Dakota Chamber  
Senate IBL Committee  
Honorable Senator Jerry Klein - Chair  
HB 1197  
February 8, 2017**

Mr. Chairman and members of the committee, my name is Andy Peterson and I am here today representing the Greater North Dakota Chamber, local chambers of commerce, and other business associations throughout North Dakota. Some members of the media describe the GNDC as the most prominent business organization in North Dakota.

We stand for economic freedom and free enterprise. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, and local chambers of commerce. As a group we stand in support to HB 1197 and urge a "Do Pass" from the committee on this bill.

As far as I can tell, the bill provides transparency and cleans up some of the mishandlings of asbestos claims which have taken place in the United States. What this bill does not do is prohibit plaintiffs from rightfully collecting damages when they have, in fact, experienced injury. There are many things we like about the bill.

First, the bill provides transparency. By requiring plaintiffs to disclose all pending and potential claims a more accurate picture can emerge in both trust claiming and civil litigation. In other words, a more accurate history is presented and a fully informed jury can more accurately assign fault. Moreover, it likely will stop or slow "double dipping" wherein claimants file trust claims after litigation and trial. Nobody wants to stop claimants from receiving damages, and most want an open and fair process in the long road to settling these claims.

Champions  Business

PO Box 2639 P: 701-222-0929  
Bismarck, ND 58502 F: 701-222-1611

[www.ndchamber.com](http://www.ndchamber.com)

Secondly, we support verification and process before payment. In other words a claimant must be diagnosed and have signed reports from credible and qualified physicians who have had a doctor-patient relationship with the exposed person before the judicial process can move forward. Let me give you a personal example wherein this may have been useful; my recently deceased father-in-law spent time in the navy during the Korean conflict. In the last few months of his life he experienced weakness and had trouble breathing.

The Veterans Administration, from which he received his health care, quickly assumed his problems were due to asbestos exposure from his time aboard ship. Probably not a bad guess. However, his problems were quickly diagnosed in a civilian hospital as Guillain-Barre Syndrome that claimed his life shortly thereafter. In this case he was sick but verification of illness should have happened before the assumption was made that he was suffering from an asbestos related disorder. Again, I wouldn't have wanted to prohibit my father-in-law from a settlement. However, it is an example wherein a proper diagnosis would have eliminated unnecessary anxiety on the part of the claimant, the claimant's family, and potentially those responsible to make claimants whole. Again, verification before action is best.

Let me conclude by saying we support compensation for those sickened by asbestos/silica. However, that compensation ought to come with transparency, diagnosis, and with a lack of double dipping which would make the process fairer to all concerned.

Again, please give HB 1197 a "Do Pass."

3601 Vincennes Road, Indianapolis, Indiana 46268  
Phone: 317.875.5250 | Fax: 317.879.8408

[www.namic.org](http://www.namic.org)

122 C Street N.W., Suite 540, Washington, D.C. 20001  
Phone: 202.628.1558 | Fax: 202.628.1601

February 28, 2017

The Honorable Jerry Klein  
Chairman, Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol Building  
600 East Boulevard  
Bismarck, North Dakota 58505

Re: Letter in Support of HB 1197 – March 1, 2017 Hearing

Dear Chairman Klein and Committee Members:

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty trade association in the country, with 1,400 regional and local mutual insurance member companies serving more than 135 million auto, home, and business policyholders and writing in excess of \$196 billion in annual premiums. More than 200,000 people are employed by NAMIC member companies. In North Dakota, we have 163 member companies, including 18 domiciled companies, which underwrite 48% of the state's insurance.

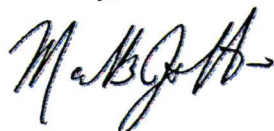
Asbestos trust funds were created after decades of litigation and bankruptcies in order to fund care for asbestos victims. Independent studies have concluded, however, that the trust system is susceptible to abuse. There is evidence that some are filing claims with multiple trusts as well as lawsuits against others that contain contradictory allegations of liability.

HB 1197 will provide transparency, and thereby reduce fraud, in asbestos litigation by increasing access to relevant, necessary information about claims made with the asbestos trust funds. It is important to stress that nothing in this bill takes away the plaintiff's remedies against those who are responsible.

Further, it must be remembered that the abusive filings of some drain resources needed to aid victims who have yet to be compensated.

NAMIC appreciates your attention to this issue. If you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely,



Mark Johnston  
Director of State Affairs – Midwest Region



OFFICE OF THE  
NATIONAL COMMANDER

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★  
(202) 861-2700 ★

February 14, 2017


The Honorable Blake Farenthold  
United States House of Representatives  
2331 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Farenthold:

On behalf of the more than 2.2 million members of The American Legion we express support for H.R. 906, *Furthering Asbestos Claims Transparency* (FACT) Act. This bill will protect veterans and other asbestos victims by requiring asbestos trust funds to disclose information on their claims. The intent of this legislation is to bring transparency to a system that is vulnerable to abuse all while assisting those who need it most.

Asbestos trust funds must be protected from future fraud claims through further transparency, but not at the cost of invading veterans' private information. Resolution Number 368, *Increase the Transparency of Asbestos*, was adopted during The American Legion's 2016 National Convention. This resolution is a vital step toward helping our nations' men and women who have been negatively impacted by exposure to asbestos. The American Legion urges Congress to act swiftly and pass these common sense protections.

In conclusion, The American Legion applauds your leadership in addressing issues that are important to America's servicemembers, veterans and their families.

Sincerely,  
  
CHARLES E. SCHMIDT  
National Commander



**Texas  
Coalition of  
Veterans  
Organizations**

*"The Voice of Veterans in Texas"*

PO Box 140527, Austin, Texas 78714

Tel: 512-472-4138

Website: <http://www.texascoalitionofvetsorganizations.org/>

James Cunningham,  
MAJ, USAR (RET)  
Chairman

15 February 2017

John McKinny  
US Army  
Vice Chair

Dear Congressman Farenthold,

Morgan Little  
CAPT USNR (RET)  
Chairman Emeritus

At the annual meeting in January, The Texas Coalition of Veterans Organizations (TCVO) voted to support mesothelioma claims transparency legislation currently being considered before the Texas legislature. As Chairman Emeritus of TCVO, an organization representing more than 35 veterans' groups representing approximately 600,000 veterans throughout Texas, I write to support similar federal legislation being debated in Washington, H.R. 906

Bill West  
US Army  
Sec/Treasurer

This legislation will protect veterans by curbing fraud and preserving bankruptcy trust resources for future claims. Military veterans are particularly hard hit by asbestos-related diseases and preserving the trusts is vital to the veteran community. Nearly two dozen trusts have reduced net payouts to claimants since 2009, which impacts veterans who develop asbestos-related injuries both today and in the future. For example, there are at least ten trusts that compensate claimants who were exposed to asbestos in naval shipyards. These trusts are collectively paying claimants 50 percent less today than they paid six years ago. Enacting trust transparency legislation in Texas and at the federal level will discourage "double-dipping," and help preserve financial resources for military veterans.

Jim Brennan  
US Army Veteran  
Vietnam Era  
Legislative Director

John A Miterko  
Army Vietnam  
Veteran  
Research Director

**Board Members:**  
John Boerstler  
US Marine Corps  
Iraq Veteran

James Duncan  
US Army Korean War  
Veteran

We commend your efforts to preserve asbestos trust funds for veterans impacted by asbestos related diseases.

John Gear  
1SG, US Army (RET)  
Desert Storm  
OIF Iraq Veteran

Sincerely yours,

George Harley  
COL USA (RET)  
Vietnam Veteran

*Morgan Little*  
Chairman Emeritus

Robert Pechukas  
US Marine Corps  
Iraq Veteran

John Spahr  
US Air Force  
Vietnam Era

Founded in 1994, Texas Coalition of Veterans Organizations (TCVO) represents 35 Veteran Service Organizations within Texas representing over 600,000 veterans. TCVO identifies, prioritizes, and presents as a united front legislative issues of common concern for all VSOs to the Texas Legislature. TCVO is a 501-c-19 Veterans Organization; IRS EIN Tax Exempt number is 74-2715952.



## North Dakota House of Representatives

State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0360

Representative  
Kim Koppelman  
District 13  
513 First Avenue NW  
West Fargo, ND 58078-1101

Residence: 701-282-9267  
Business: 701-492-7317  
Fax: 701-282-9267

kkoppelman@nd.gov

Committees:  
Judiciary, Chairman  
Political Subdivisions

3-3-17

To: Chairman Sen. Jerry Klein and Members of the Senate IBL Committee

Re.: Suggested Amendments to HB 1197

Mr. Chairman and Members of the Committee:

Per your request, I have had Legislative Council draft the amendment, proposed in your Committee's hearing on HB 1197 on Monday, in proper form and style and am presenting you with the requested summary of the effect of this amendment.

The amendment addressed Judge Irby's concern that a motion to stay, filed by a defendant too close to the time of trial, could have an impact upon the trial date.

That concern is addressed by requiring that the defendant file any motion to stay at least 75 days before trial. It also requires the defendant to meet and confer with plaintiff before filing a motion with the court. The conference with plaintiff's counsel in many cases will relieve the need to have a motion before the court. The defendant will also be required to produce or describe the documentation it possesses or is aware of in support of its motion.

The amendment also recognized that North Dakota is a comparative fault state, not a joint and several liability state. It, therefore, clarifies that it will not change the apportionment of fault approach in North Dakota.

The amendment also deletes the emergency clause that was in the bill as passed out of the house.

Mr. Chairman and Members of the Committee, I trust that this information will be helpful in the Committee's consideration of the amendment and, again, I ask for your positive recommendation on the bill.

Sincerely,

A handwritten signature in cursive script that reads "Kim Koppelman".

Rep. Kim Koppelman

17.0403.04001  
Title.

Prepared by the Legislative Council staff for  
Representative K. Koppelman  
March 2, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1197

Page 1, line 2, remove "; and to declare an emergency"

Page 3, line 16, replace "sixtieth" with "seventy-fifth"

Page 3, line 17, after the underscored period insert "The defendant shall produce or describe the documentation the defendant possesses or of which the defendant is aware in support of the motion. Before filing the motion, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional trust claim."

Page 4, line 18, remove "- Valuation of asbestos trust claims - Judicial notice"

Page 4, replace lines 19 through 27 with:

"At least thirty days before trial, the plaintiff shall provide the court with documentation identifying each claim the plaintiff has made against an asbestos trust. The court shall enter the documentation into the record."

Page 5, remove line 8

Re-number accordingly