

SENATE BILL NO. 282

INTRODUCED BY W. CRISMORE, F. THOMAS, BECK, BERRY, R. BROWN, CARNEY, COLE, EKEGREN, KEENAN, MCCARTHY, MCGEE, MCNUTT, MILLER, MOOD, SLITER, YOUNKIN, ZOOK, CURTISS

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE ASBESTOS CLAIMS COURT; PROVIDING FOR THE APPOINTMENT OF THE ASBESTOS CLAIMS JUDGE; PROVIDING FOR THE PROCEDURES TO BE USED FOR TRYING AN ASBESTOS-RELATED CLAIM; AMENDING SECTIONS 3-5-113, 3-5-115, 3-15-104, 3-15-204, AND 3-15-205, MCA; AND PROVIDING AN IMMEDIATE A CONTINGENT EFFECTIVE DATE."

WHEREAS, the Legislature finds that there are a large number of asbestos-related claims by Montana citizens that are primarily within the venue of the 19th Judicial District; and

WHEREAS, the large number of asbestos-related claims will impede the ability of the single District Court Judge in the 19th Judicial District to handle the normal case load of the District and will raise several potential conflicts of interest; and

WHEREAS, it is imperative that asbestos-related claims be dealt with expeditiously in order to allow Montana citizens with life-threatening illnesses to receive a speedy resolution of their claims; and

WHEREAS, Article VII, section 1, of the Montana Constitution allows additional courts to be provided by law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definition.** As used in [sections 1 through 5], unless the context requires otherwise, "asbestos-related claim" means an action brought for the recovery of monetary damages for personal injury, wrongful death, loss or consortium, or other injury arising out of an asbestos-related disease that is alleged to result from the mining of vermiculite, the processing of vermiculite, or the transfer, storage, installation, or removal of a product containing vermiculite.

NEW SECTION. **Section 2. Asbestos claims judge.** (1) A civil action involving an asbestos-related claim may be tried by a judge pro tempore or special master, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, appointed by the supreme



1 court as provided in 3-5-115, and sworn to try the cause before entering upon the duties in trying the
2 cause. Upon appointment, the individual must be designated as the asbestos claims judge. The right to
3 a jury trial is not waived by the stipulation to and appointment of the asbestos claims judge.

4 (2) The asbestos claims judge has the authority and power of an elected district court judge in the
5 civil action involving an asbestos-related claim. All proceedings before the asbestos claims judge must be
6 conducted in accordance with the rules of evidence and procedure governing district courts.

7 (3) Any order, judgment, or decree made or rendered in an asbestos-related civil case by the
8 asbestos claims judge has the same force and effect as if made or rendered by the district court with the
9 regular judge presiding.

10 (4) A party stipulating to have an asbestos-related claim heard by the asbestos claims judge may
11 not file a motion for substitution of the judge pursuant to 3-1-804.

12 (5) All filings relating to an asbestos-related claim must be filed with the clerk of court in the
13 judicial district in which the claim arose. The parties shall provide a copy of each filing to the asbestos
14 claims judge.

15

16 NEW SECTION. **Section 3. Asbestos claims court -- venue -- jury pool.** (1) The asbestos claims
17 judge may hear an asbestos-related claim in any venue stipulated by the parties as provided in 25-2-202
18 or in any venue otherwise determined by the asbestos claims judge in accordance with a stipulation of the
19 parties. In stipulating venue, the parties shall take into consideration the availability of courtroom facilities.
20 The asbestos claims court may prepare a list of available courtroom facilities for consideration of the
21 parties.

22 (2) The pool of prospective jurors for an asbestos-related claim may be drawn from any county
23 in accordance with a stipulation of the parties. The jurors must be drawn, as provided in 3-15-501 and
24 3-15-503, from the jury lists of the counties comprising the jury pool. The clerk of the district court for
25 the district in which the trial is conducted shall notify the prospective jurors and make the statement
26 provided for in 3-15-204(4).

27

28 NEW SECTION. **Section 4. Operating expenses -- asbestos claims administration fund.** The
29 asbestos claims judge may employ the employees that may be required to carry out the duties under
30 [sections 1 through 5]. All expenditures of the asbestos claims judge, including but not limited to salaries,

1 travel expenses, office rent, office equipment, and supplies, must be paid out of the asbestos claims
2 administration fund. The asbestos claims administration fund is the account in the state treasury in which
3 the funding for the asbestos claims court is deposited.

4

5 **NEW SECTION. Section 5. Direct appeal to supreme court.** An appeal from a final decision of
6 the asbestos claims judge must be filed directly with the supreme court of Montana in the manner provided
7 by law for appeals from the district court in civil cases.

8

9 **Section 6.** Section 3-5-113, MCA, is amended to read:

10 **"3-5-113. Judges pro tempore -- special masters -- scope of authority in criminal and civil cases.**

11 (1) (a) A civil action in the district court may be tried by a judge pro tempore or special master, who must
12 be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of
13 record, appointed by the court as provided in 3-5-115 or [section 2], and sworn to try the cause before
14 entering upon the duties in trying the cause.

15 (b) The judge pro tempore or special master has the authority and power of an elected district
16 court judge in the particular civil action tried in the manner provided for in this subsection (1). All
17 proceedings before a judge pro tempore or special master must be conducted in accordance with the rules
18 of evidence and procedure governing district courts.

19 (c) Any order, judgment, or decree made or rendered in a civil case by the judge pro tempore or
20 special master has the same force and effect as if made or rendered by the district court with the regular
21 judge presiding.

22 (2) (a) Preliminary, nondispositive proceedings in criminal actions in a district court may be
23 conducted by a judge pro tempore or special master. The judge pro tempore or special master in a criminal
24 case must be appointed by a district court judge or judges as provided in 3-5-122.

25 (b) All proceedings before a judge pro tempore or special master in a criminal case must be
26 conducted in accordance with the rules of evidence and procedure governing district courts.

27 (c) The judge pro tempore or special master in a criminal case has the authority and power of a
28 district court judge to issue orders pursuant to Title 46, chapter 9, concerning bail and conditions of
29 release or detention of persons pending trial, and to conduct arraignments, initial appearances on warrants,
30 and initial appearances on probation revocations. An order made by the judge pro tempore or special

1 master in a criminal case has the same force and effect as if made by a district court judge.

2 (d) Within 10 days after issuance of an order by a judge pro tempore or special master in a
3 criminal case, a party may object to the order as provided by rules of court and a district court judge shall
4 make a de novo determination of that portion of the order to which objection is made. The district court
5 judge may accept, reject, or modify the order in whole or in part. The district court judge may also receive
6 further evidence or recommit the matter to the judge pro tempore or special master with instructions.

7 (e) All proceedings before a judge pro tempore or special master in a criminal case must be
8 conducted in a suitable room in the courthouse, subject to the provisions of Title 46 relating to the use
9 of two-way electronic audio-video communication. All records must be filed and kept in accordance with
10 the rules governing the district court."
11

12 **Section 7.** Section 3-5-115, MCA, is amended to read:

13 **"3-5-115. Agreement, petition, and appointment of judge pro tempore -- waiver of jury trial.** (1)
14 Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the
15 appointment of a judge pro tempore. ~~It~~ Except as provided in [section 2], if the district court judge having
16 jurisdiction over the case where the action was filed finds that the appointment is in the best interest of
17 the parties and serves justice, ~~he~~ the district court judge may appoint the judge pro tempore nominated
18 by the parties to preside over the whole or any aspect of the action as if the regular district court judge
19 were presiding.

20 (2) ~~An~~ Except as provided in [section 2], an appointment of a judge pro tempore constitutes a
21 waiver of the right to trial by jury by any party having the right.

22 (3) The supreme court shall appoint the asbestos claims judge as provided in [section 2]."
23

24 **Section 8.** Section 3-15-104, MCA, is amended to read:

25 **"3-15-104. Trial jury defined.** ~~A~~ Except as provided in [section 3], a trial jury is a body of persons
26 returned from the citizens of a particular district before a court or officer of competent jurisdiction and
27 sworn to try and determine, by verdict, a question of fact."
28

29 **Section 9.** Section 3-15-204, MCA, is amended to read:

30 **"3-15-204. Duties of clerk as to jurors.** (1) The clerk ~~must~~ shall keep a record of the attendance

1 of jurors and compute the amount due for mileage. The distance from any point to the county seat must
2 be determined by the shortest traveled route.

3 (2) The clerk ~~must~~ shall give to each juror, at the time ~~he~~ the juror is excused from further service,
4 a warrant signed by ~~himself~~ the clerk, in which must be stated the name of the juror, the number of days'
5 attendance, the number of miles traveled, and the amount due.

6 (3) On presentation of ~~such~~ the warrant to the county treasurer, the amount specified in the
7 warrant must be paid out of the general fund unless the county has a district court fund. If the county has
8 a district court fund, the amount must be paid out of ~~such~~ the district court fund.

9 (4) The clerk ~~must~~ shall make a detailed statement containing a list of the jurors and the amount
10 of fees and mileage earned by each juror and file the ~~same~~ statement with the clerk of the board of county
11 commissioners on the first day of every regular meeting of the board. ~~No~~ A quarterly salary ~~must~~ may not
12 be paid to the clerk until ~~such~~ the statement is filed. The board ~~must~~ shall examine ~~such~~ the statement and
13 see that it is correct.

14 (5) The clerk of court for the county in which an asbestos-related claim is tried shall perform the
15 functions required in subsections (1) through (4), except that the. THE payment of claims COSTS INCURRED
16 UNDER THIS SECTION must be made from the asbestos claims administration fund provided for in [section 4]."

17
18 **Section 10.** Section 3-15-205, MCA, is amended to read:

19 **"3-15-205. Costs of impaneling jury.** (1) In a civil action before a court of record in which the
20 parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle
21 the action or stipulate to a continuance and then fail or refuse to inform the court or clerk of court of the
22 settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the
23 reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing
24 under 3-15-201, against any party.

25 (2) In civil actions, the court may assess against a party the reasonable public expenses of
26 impaneling a jury, including jury fees and mileage expenses paid or owing under 3-15-201, if the court on
27 an issue of law or the jury on an issue of fact determines that the party's case is frivolous or maintained
28 for purposes of harassment. The court shall instruct the jury regarding the provisions of this subsection.

29 (3) ~~(a) Costs~~ Except as provided in subsection (3)(b), costs collected under this section must be
30 deposited in the county general fund unless the county has a district court fund. If the county has a district

1 court fund, the costs must be deposited in the district court fund.

2 (b) Costs collected under this section by the asbestos claims court provided for in [section 3] must
3 be deposited in the asbestos claims administration fund provided for in [section 4]."

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5 NEW SECTION. Section 11. Codification instruction. [Sections 1 through 5] are intended to be
6 codified as an integral part of Title 3, and the provisions of Title 3 apply to [sections 1 through 5].

7

8 NEW SECTION. Section 12. Effective ~~CONTINGENT EFFECTIVE~~ date. [This act] ~~is effective on passage~~
9 ~~and approval~~ IS EFFECTIVE CONTINGENT ON A DETERMINATION BY THE MONTANA SUPREME COURT THAT, BASED ON
10 DECISIONS REACHED IN THE FEDERAL BANKRUPTCY PROCEEDINGS INVOLVING W.R. GRACE AND OTHER CIRCUMSTANCES
11 THAT THE COURT DEEMS ADVISABLE TO CONSIDER, THERE EXISTS SUFFICIENT NEED TO IMPLEMENT THE PROVISIONS OF
12 [THIS ACT]. THE COURT SHALL NOTIFY THE SECRETARY OF STATE AND THE CODE COMMISSIONER WHEN THIS CONTINGENCY
13 IS MET.

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