

SENATE BILL 1049

D3, P1

9lr3342

By: **Senator Waldstreicher**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 21, 2019

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 27, 2019

CHAPTER _____

1 AN ACT concerning

2 **Civil Actions – Office of Asbestos Case Mediation and Resolution**

3 FOR the purpose of establishing the Office of Asbestos Case Mediation and Resolution in
4 the Executive Department; providing that the head of the Office is the Director of
5 the Office; providing for the appointment and salary of the Director; authorizing the
6 Director to employ a staff and adopt certain regulations; requiring the Director to
7 perform certain duties; providing for the qualifications of certain mediators;
8 requiring certain civil suits involving asbestos claims to be referred to the Office for
9 mediation; ~~providing for the priority of certain civil suits in the mediation process;~~
10 authorizing a certain plaintiff to forego the mediation process by providing certain
11 notice; ~~requiring a court to schedule a trial for an asbestos case under certain~~
12 ~~circumstances; providing that mediation costs shall be paid from funds provided for~~
13 ~~in the State budget;~~ providing for the priority of certain civil suits in the mediation
14 process; requiring all parties referred to the Office to participate in mediation subject
15 to a certain condition; requiring the Director to notify the court if certain parties are
16 unable to reach an agreement through mediation and requiring the court to proceed
17 with the case in a certain manner; prohibiting the court from proceeding with a
18 certain case before receiving a certain notice; providing that mediation costs shall be
19 paid by the parties equally, unless otherwise agreed to by the parties, and specifying
20 that the parties are not responsible for the Office's operational costs; requiring the
21 court to proceed with a certain case in a certain manner if a certain case management
22 plan is changed, modified, eliminated, or rescinded; requiring the Director to submit
23 an annual report to the General Assembly on the activities of the Office for the
24 preceding calendar year; defining certain terms; making the provisions of this Act

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 severable; and generally relating to the Office of Asbestos Case Mediation and
2 Resolution.

3 BY adding to

4 Article – Courts and Judicial Proceedings

5 Section 3–18A–01 through ~~3–18A–03~~ 3–18A–04 to be under the new subtitle
6 “Subtitle 18A. Asbestos Case Mediation and Resolution”

7 Annotated Code of Maryland

8 (2013 Replacement Volume and 2018 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
10 That the Laws of Maryland read as follows:

11 **Article – Courts and Judicial Proceedings**

12 **SUBTITLE 18A. ASBESTOS CASE MEDIATION AND RESOLUTION.**

13 **3–18A–01.**

14 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
15 INDICATED.

16 (B) “ASBESTOS CASE” MEANS A CIVIL CASE PENDING ON THE DOCKET OF
17 TRACK 5 OF THE DIFFERENTIATED CASE MANAGEMENT PLAN OF THE CIRCUIT
18 COURT FOR BALTIMORE CITY.

19 (C) “DIRECTOR” MEANS THE DIRECTOR OF THE OFFICE OF ASBESTOS
20 CASE MEDIATION AND RESOLUTION.

21 (D) “MEDIATION” HAS THE MEANING STATED IN TITLE 17 OF THE
22 MARYLAND RULES.

23 (E) “OFFICE” MEANS THE OFFICE OF ASBESTOS CASE MEDIATION AND
24 RESOLUTION ESTABLISHED UNDER § 3–18A–02 OF THIS SUBTITLE.

25 (F) “TRACK 5” MEANS APPENDIX 5 OF TRACK 5 OF THE DIFFERENTIATED
26 CASE MANAGEMENT PLAN OF THE CIRCUIT COURT FOR BALTIMORE CITY.

27 **3–18A–02.**

28 (A) THERE IS AN OFFICE OF ASBESTOS CASE MEDIATION AND
29 RESOLUTION IN THE EXECUTIVE DEPARTMENT.

30 (B) (1) THE HEAD OF THE OFFICE IS THE DIRECTOR.

1 (2) THE DIRECTOR IS APPOINTED BY THE GOVERNOR WITH THE
2 ADVICE AND CONSENT OF THE SENATE.

3 (3) THE DIRECTOR SHALL HAVE A SALARY PROVIDED IN THE STATE
4 BUDGET THAT IS EQUIVALENT TO THE ANNUAL SALARY PAYABLE TO A JUDGE OF THE
5 CIRCUIT COURT.

6 (C) THE DIRECTOR MAY:

7 (1) EMPLOY STAFF IN ACCORDANCE WITH THE STATE BUDGET; AND

8 (2) ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.

9 (D) (1) THE DIRECTOR SHALL PREPARE A LIST OF QUALIFIED
10 INDIVIDUALS WILLING TO SERVE AS MEDIATORS OF ASBESTOS CASES UNDER THIS
11 SUBTITLE.

12 (2) AN INDIVIDUAL IS QUALIFIED TO SERVE AS A MEDIATOR OF
13 ASBESTOS CASES UNDER THIS SUBTITLE IF THE INDIVIDUAL MEETS:

14 (I) THE QUALIFICATIONS TO BE A COURT-APPOINTED
15 MEDIATOR UNDER MARYLAND RULE 17-205; AND

16 (II) ANY OTHER REQUIREMENTS ESTABLISHED BY THE
17 DIRECTOR.

18 (E) THE DIRECTOR SHALL ESTABLISH PROCEDURES FOR THE EFFECTIVE
19 MEDIATION OF ASBESTOS CASES, INCLUDING PROCEDURES FOR THE USE OF
20 NEUTRAL EXPERTS AND DISCOVERY.

21 3-18A-03.

22 ~~(A) EACH ACTIVE ASBESTOS CASE, INCLUDING EACH FORMERLY INACTIVE~~
23 ~~ASBESTOS CASE THAT BECOMES ACTIVE, SHALL BE REFERRED BY THE COURT TO~~
24 ~~THE OFFICE FOR POSSIBLE MEDIATION.~~

25 ~~(B) PRIORITY FOR MEDIATION OF AN ASBESTOS CASE UNDER THIS~~
26 ~~SUBTITLE SHALL BE GIVEN TO CASES INVOLVING SERIOUS ILLNESS, INCLUDING~~
27 ~~MESOTHELIOMA, LUNG CANCER, AND ANY OTHER TYPE OF CANCER.~~

28 ~~(C) THE DIRECTOR SHALL ESTABLISH PROCEDURES FOR THE EFFECTIVE~~
29 ~~MEDIATION OF ASBESTOS CASES INCLUDING PROCEDURES FOR THE USE OF~~
30 ~~NEUTRAL EXPERTS AND DISCOVERY.~~

1 ~~(D) (1) AN INDIVIDUAL PLAINTIFF MAY ELECT TO FOREGO THE~~
2 ~~MEDIATION PROCESS AT ANY TIME BY NOTIFYING THE COURT AND THE DIRECTOR~~
3 ~~IN WRITING.~~

4 ~~(2) ON RECEIPT OF WRITTEN NOTICE OF AN ELECTION UNDER~~
5 ~~PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL SCHEDULE A TRIAL~~
6 ~~UNDER APPENDIX 5 OF TRACK 5 OF THE DIFFERENTIATED CASE MANAGEMENT~~
7 ~~PLAN OF THE CIRCUIT COURT FOR BALTIMORE CITY.~~

8 ~~(E) IF THE PARTIES TO AN ASBESTOS CASE ARE UNABLE TO REACH AN~~
9 ~~AGREEMENT THROUGH THE MEDIATION PROCESS UNDER THIS SUBTITLE, THE~~
10 ~~DIRECTOR SHALL NOTIFY THE COURT, AND THE COURT SHALL SCHEDULE A TRIAL~~
11 ~~UNDER APPENDIX 5 OF TRACK 5 OF THE DIFFERENTIATED CASE MANAGEMENT~~
12 ~~PLAN OF THE CIRCUIT COURT FOR BALTIMORE CITY.~~

13 ~~(F) THE COSTS OF MEDIATION UNDER THIS SUBTITLE SHALL BE PAID FROM~~
14 ~~FUNDS PROVIDED IN THE STATE BUDGET.~~

15 (A) (1) BEFORE HOLDING OR SCHEDULING A STATUS CONFERENCE FOR
16 AN ACTIVE ASBESTOS CASE, INCLUDING A FORMERLY INACTIVE ASBESTOS CASE
17 THAT BECOMES ACTIVE, THE COURT SHALL REFER THE ASBESTOS CASE TO THE
18 OFFICE FOR MEDIATION.

19 (2) (I) EITHER PARTY IN AN ASBESTOS CASE MAY SEEK MEDIATION
20 UNDER THIS SUBTITLE BY SUBMITTING TO THE COURT A WRITTEN REQUEST TO
21 PARTICIPATE IN MEDIATION.

22 (II) ON RECEIPT OF A WRITTEN REQUEST FOR MEDIATION, THE
23 COURT SHALL REFER THE ASBESTOS CASE TO THE OFFICE FOR MEDIATION.

24 (B) (1) AN INDIVIDUAL PLAINTIFF WHO HAS BEEN DIAGNOSED WITH
25 MESOTHELIOMA MAY ELECT TO FOREGO THE MEDIATION PROCESS AT ANY TIME BY
26 NOTIFYING THE COURT AND THE DIRECTOR IN WRITING.

27 (2) SUBJECT TO SUBSECTION (H) OF THIS SECTION, ON RECEIPT OF
28 WRITTEN NOTICE OF AN ELECTION UNDER PARAGRAPH (1) OF THIS SUBSECTION,
29 THE COURT SHALL PROCEED WITH THE CASE IN ACCORDANCE WITH TRACK 5.

30 (C) PRIORITY FOR MEDIATION OF AN ASBESTOS CASE UNDER THIS
31 SUBTITLE SHALL BE GIVEN TO CASES INVOLVING SERIOUS ILLNESS, INCLUDING
32 MESOTHELIOMA, LUNG CANCER, AND ANY OTHER TYPE OF CANCER.

1 **(D) SUBJECT TO SUBSECTION (B)(1) OF THIS SECTION, ALL PARTIES**
2 **REFERRED TO THE OFFICE FOR MEDIATION SHALL PARTICIPATE IN THE MEDIATION**
3 **PROCESS.**

4 **(E) SUBJECT TO SUBSECTION (H) OF THIS SECTION, IF THE PARTIES TO AN**
5 **ASBESTOS CASE ARE UNABLE TO REACH AN AGREEMENT THROUGH THE MEDIATION**
6 **PROCESS, THE DIRECTOR SHALL NOTIFY THE COURT OF THE CONCLUSION OF**
7 **MEDIATION, AND THE COURT SHALL PROCEED WITH THE ASBESTOS CASE IN**
8 **ACCORDANCE WITH TRACK 5.**

9 **(F) THE COURT MAY NOT PROCEED WITH AN ASBESTOS CASE REFERRED TO**
10 **THE OFFICE FOR MEDIATION BEFORE RECEIVING NOTICE OF THE ELECTION TO**
11 **FOREGO MEDIATION UNDER SUBSECTION (B) OF THIS SECTION OR THE CONCLUSION**
12 **OF MEDIATION UNDER SUBSECTION (E) OF THIS SECTION.**

13 **(G) (1) UNLESS OTHERWISE AGREED TO BY THE PARTIES, THE COSTS OF**
14 **MEDIATION SHALL BE DIVIDED EQUALLY BETWEEN THE PARTIES.**

15 **(2) THE PARTIES MAY NOT BE HELD RESPONSIBLE FOR THE OFFICE'S**
16 **OPERATIONAL COSTS.**

17 **(H) IF TRACK 5 IS CHANGED, MODIFIED, ELIMINATED, OR RESCINDED, THE**
18 **COURT SHALL PROCEED WITH THE ASBESTOS CASE IN ACCORDANCE WITH TRACK 5,**
19 **AS IT EXISTED ON MARCH 29, 2019, AND, IF APPLICABLE, THE ORDER**
20 **ESTABLISHING A RIGHT-OF-WAY TRIAL QUEUE FOR LIVING MESOTHELIOMA**
21 **CASES, GRANTED AND FILED IN THE CIRCUIT COURT FOR BALTIMORE CITY ON**
22 **FEBRUARY 27, 2013.**

23 **3-18A-04.**

24 **ON OR BEFORE JANUARY 1 EACH YEAR, THE DIRECTOR SHALL REPORT TO**
25 **THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE**
26 **GOVERNMENT ARTICLE, ON THE ACTIVITIES OF THE OFFICE FOR THE PRECEDING**
27 **CALENDAR YEAR.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
29 the application thereof to any person or circumstance is held invalid for any reason in a
30 court of competent jurisdiction, the invalidity does not affect other provisions or any other
31 application of this Act that can be given effect without the invalid provision or application,
32 and for this purpose the provisions of this Act are declared severable.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
34 1, 2019.