

AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 597

Introduced by Assembly Member Cooley

February 24, 2015

An act to amend Sections 36 and 877 of, and to add Chapter 6 (commencing with Section 820) to Title 10 of Part 2 of, the Code of Civil Procedure, relating to civil claims.

LEGISLATIVE COUNSEL'S DIGEST

AB 597, as amended, Cooley. Asbestos Tort Trust Transparency Act.

Existing law provides generally for procedures governing civil actions. Existing law imposes additional procedures that apply with respect to limited types of civil actions.

This bill would enact the Asbestos Tort Claim Trust Transparency Act, which would establish additional procedures with respect to civil actions pertaining to asbestos tort claims, as defined. The bill would, among other things, ~~require~~, *require* that a plaintiff disclose specified information with respect to any asbestos trusts, as defined, against which the plaintiff has or could pursue a claim, and entitle a defendant to discovery with respect to relevant information pertaining to the plaintiff held by other asbestos trusts and to pursue various motions.

This bill would require a plaintiff to serve certain ~~statements made under penalty of perjury~~, *sworn statements*. By expanding the scope of an existing crime, ~~this~~ *the* bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 36 of the Code of Civil Procedure is
 2 amended to read:
 3 36. (a) A party to a civil action who is over 70 years of age
 4 may petition the court for a preference, which the court shall grant
 5 if the court makes both of the following findings:
 6 (1) The party has a substantial interest in the action as a whole.
 7 (2) The health of the party is such that a preference is necessary
 8 to prevent prejudicing the party’s interest in the litigation.
 9 (b) A civil action to recover damages for wrongful death or
 10 personal injury shall be entitled to preference upon the motion of
 11 any party to the action who is under 14 years of age unless the
 12 court finds that the party does not have a substantial interest in the
 13 case as a whole. A civil action subject to subdivision (a) shall be
 14 given preference over a case subject to this subdivision.
 15 (c) Unless the court otherwise orders:
 16 (1) A party may file and serve a motion for preference supported
 17 by a declaration of the moving party that all essential parties have
 18 been served with process or have appeared.
 19 (2) At any time during the pendency of the action, a party who
 20 reaches 70 years of age may file and serve a motion for preference.
 21 (d) In its discretion, the court may also grant a motion for
 22 preference that is accompanied by clear and convincing medical
 23 documentation that concludes that one of the parties suffers from
 24 an illness or condition raising substantial medical doubt of survival
 25 of that party beyond six months, and that satisfies the court that
 26 the interests of justice will be served by granting the preference.
 27 (e) Notwithstanding any other law, the court may in its discretion
 28 grant a motion for preference that is supported by a showing that
 29 satisfies the court that the interests of justice will be served by
 30 granting this preference.
 31 (f) Upon the granting of ~~such~~ a motion for preference, the court
 32 shall set the matter for trial not more than 120 days from that date
 33 and there shall be no continuance beyond 120 days from the

1 granting of the motion for preference except for physical disability
2 of a party or a party’s attorney, or upon a showing of good cause
3 stated in the record. ~~Any~~ A continuance shall be for no more than
4 15 days and no more than one continuance for physical disability
5 may be granted to any party.

6 (g) Upon the granting of a motion for preference pursuant to
7 subdivision (b), a party in an action based upon a health provider’s
8 alleged professional negligence, as defined in Section 364, shall
9 receive a trial date not sooner than six months and not later than
10 nine months from the date that the motion is granted.

11 (h) In an asbestos tort action, as defined in Section 821, a
12 plaintiff ~~bringing~~ *filing* a motion for preference shall submit a
13 sworn affidavit in support of *the motion* stating each of the
14 following:

15 (1) That he or she has complied with the disclosure requirements
16 of subdivision (a) of Section 822.

17 (2) That he or she has made good faith efforts to determine if
18 there are any asbestos trusts against which he or she has a basis to
19 make a claim and, in the event that there are, that he or she has
20 made claims with all of those asbestos trusts.

21 (i) A plaintiff in an asbestos tort action, as defined in Section
22 821, shall not be entitled to a trial preference pursuant to this
23 section if the plaintiff is subject to an order issued pursuant to
24 Section 825.

25 SEC. 2. Chapter 6 (commencing with Section 820) is added
26 to Title 10 of Part 2 of the Code of Civil Procedure, to read:

27
28 CHAPTER 6. ACTIONS RELATING TO ASBESTOS TORT CLAIMS
29

30 820. This ~~Chapter~~ *chapter* shall be known, and may be cited
31 as, the Asbestos Tort Claim Trust Transparency Act.

32 821. The following terms are defined as follows:

33 (a) “*Asbestos tort action*” means any action involving an
34 asbestos tort claim.

35 (a)
36 (b) “Asbestos tort claim” means a claim for damages, loss,
37 indemnification, contribution, restitution, or other relief, including
38 punitive damages, related to personal injury or death of a person
39 for whom an asbestos trust may be responsible, arising out of an
40 alleged exposure to asbestos, including, without limitation, lost

1 earnings or earning capacity, medical expenses, medical
2 monitoring, loss of consortium, loss of the ability to provide
3 household services, loss of love, companionship, comfort, care,
4 assistance, protection, affection, society, moral support, training
5 and guidance, mental or emotional distress, *pain and suffering*, or
6 any other harm ~~for which an asbestos trust claim~~ *that* may be
7 asserted under law.

8 ~~(b)~~

9 (c) “Asbestos trust” means a trust entity, qualified settlement
10 fund, or claims processing facility established or in the process of
11 being established pursuant to an administrative or legal action or
12 a United States Bankruptcy court pursuant to Section 524(g) of
13 Title 11, or Section 40101 of Title 49, of the United States Code,
14 or other law formed for the purpose of compensating claimants
15 asserting eligible asbestos tort claims.

16 ~~(e)~~

17 (d) “Asbestos trust claim” means any asbestos tort claim filed
18 or that could be filed with an asbestos trust.

19 ~~(d)~~

20 (e) “Asbestos trust claim documents” means all writings, as
21 defined by Section 250 of the Evidence Code, and information
22 relevant to a pending or potential claim against an asbestos trust,
23 including *any communications between the plaintiff and an*
24 *asbestos trust* and all proof of claim forms and ~~all~~ supplementary
25 or supporting materials submitted to or required by an asbestos
26 ~~trust for an asbestos trust claim to be evaluated for compensation,~~
27 *trust*, including, without limitation, affidavits, declarations,
28 interrogatory responses, deposition and trial testimony, economic
29 loss documentation, medical records, death certificate and
30 certificate of official ~~capacity, claims payment matrices, trust~~
31 ~~distribution procedures, or asbestos trust plans for reorganization.~~
32 *capacity*.

33 (f) “Plaintiff” means a plaintiff in an asbestos tort action and
34 any person acting on the plaintiff’s behalf, including, but not
35 limited to, the plaintiff’s attorney.

36 822. (a) (1) The plaintiff in an asbestos tort claim shall serve
37 ~~on all parties each of the following:~~

38 (A) A ~~sworn statement, under penalty of perjury, statement~~
39 identifying each asbestos trust claim ~~that plaintiff has filed or has~~
40 ~~basis to file against an asbestos trust and, for each such asbestos~~

1 ~~trust claim~~, claim, and for each asbestos trust claim, whether there
2 has been a request to defer, delay, suspend, or toll the claim. *The*
3 *sworn statement shall also state the dollar amount that the plaintiff*
4 *has requested and received for each asbestos trust claim.*

5 (B) All asbestos trust claim ~~documents that plaintiff has~~
6 ~~submitted to an asbestos trust.~~ *documents.*

7 ~~(C) All documents relating to communications between, or on~~
8 ~~behalf of, plaintiff and an asbestos trust.~~

9 (2) The documents described in paragraph (1) shall be served
10 not later than 90 days after the filing of the complaint in an asbestos
11 tort action, except under the following circumstances in which
12 case the documents shall be served in the lesser time:

13 (A) Within 30 days, in an asbestos tort action in which the
14 plaintiff is awarded a preferential trial date pursuant to Section 36
15 of the Code of Civil Procedure.

16 (B) On or before March 1, 2016, with respect to an asbestos tort
17 action that is currently pending on or before January 1, 2016.

18 (b) The plaintiff shall supplement the information and materials
19 served pursuant to subdivision (a) within 30 days of filing any
20 additional asbestos trust claims, supplementing an existing asbestos
21 trust claim, or receiving additional information or materials related
22 to any asbestos trust claim and, to the extent not earlier
23 supplemented, ~~within 7 days of~~ *no later than seven days before*
24 *trial.*

25 ~~(c) Nothing in this~~ *This section shall not prevent the court from*
26 *requiring disclosures for an asbestos trust claim that are in addition*
27 *to those required by this section.*

28 823. (a) A defendant in an asbestos tort action may seek
29 discovery of relevant materials from ~~an any~~ asbestos trust ~~identified~~
30 ~~by the plaintiff pursuant to Section 822 that concern~~ *that concerns*
31 the plaintiff. The plaintiff may not claim privilege or confidentiality
32 to bar discovery under this section and shall provide consent or
33 other authorization as may be required by an asbestos trust to
34 facilitate the release of relevant asbestos trust claim documents
35 sought by the defendant.

36 (b) Asbestos trust claim documents shall be admissible as
37 evidence in an asbestos tort action, including, without limitation,
38 to prove alternative causation for a plaintiff's injury or to prove
39 that *the fault or responsibility for a plaintiff's injury should be*

1 apportioned. ~~No claims~~ *Claims* of privilege shall *not* apply to
2 asbestos trust claim documents.

3 824. (a) If a defendant identifies an asbestos trust that a
4 plaintiff failed to disclose as required by Section 822 as to which
5 the defendant *reasonably* believes *the* plaintiff has a viable *asbestos*
6 *trust* claim, the defendant may file a motion for an order for any
7 of the following:

8 (a)

9 (1) To require the plaintiff to file a claim against ~~the improperly~~
10 ~~withheld asbestos trust~~. *all such asbestos trusts*.

11 (b)

12 (2) To stay the action or vacate the trial date until *the* plaintiff
13 files ~~a~~ *an asbestos trust* claim against ~~the improperly withheld~~
14 ~~asbestos trust~~. *all such asbestos trusts*.

15 (c)

16 (3) Any other relief that the court deems appropriate in its
17 discretion for good cause shown.

18 (b) *Absent new evidence of exposure to other asbestos products*
19 *or exposure to asbestos products at work sites or locations not*
20 *previously disclosed by the plaintiff in discovery, a defendant shall*
21 *only file one motion naming all the asbestos trusts against which*
22 *the defendant reasonably believes the plaintiff has a viable asbestos*
23 *trust claim that the plaintiff has not previously disclosed.*

24 (c) *The court may award a plaintiff who successfully opposes*
25 *a defendant's motion brought pursuant to this section reasonable*
26 *attorney's fees and costs incurred in opposing the defendant's*
27 *motion, upon the plaintiff's request and showing of good cause.*

28 825. ~~The court may stay an asbestos tort~~ *In an asbestos tort*
29 *action, the court shall stay the action, decline to assign an initial*
30 *trial date, deny a motion for preference under Section 36 of the*
31 *Code of Civil Procedure, vacate or continue the trial* ~~date~~ *in*
32 ~~asbestos tort action~~; *date*, or impose any other remedies in its
33 ~~discretion~~ *discretion, including, but not limited to, imposing*
34 *sanctions pursuant to Sections 2023.010 and 2023.030, in any of*
35 *the following circumstances:*

36 (a) Identification by a plaintiff of an asbestos trust pursuant to
37 Section 822 for which *the* plaintiff has a basis to file but has not
38 yet filed an asbestos trust claim.

39 (b) Failure of a plaintiff to serve the disclosures required
40 pursuant to Section 822.

1 (c) Upon ~~the granting of~~ a defendant's motion pursuant to
2 Section 824.

3 826. *No earlier than 60 days after, and no later than 120 days*
4 *after, entry of judgment, the plaintiff in an asbestos tort action*
5 *shall serve the following:*

6 (a) *A sworn statement that includes all of the following:*

7 (1) *Identification of each asbestos trust claim and, for each*
8 *asbestos trust claim, whether there has been a request to defer,*
9 *delay, suspend, or toll the claim.*

10 (2) *A statement of the dollar amount that the plaintiff has*
11 *requested and received from each asbestos trust claim.*

12 (3) *A statement that the plaintiff has filed all viable asbestos*
13 *trust claims and no additional asbestos trust claims will be*
14 *subsequently filed.*

15 (b) *All asbestos trust claim documents not previously served.*

16 826.

17 827. *In an asbestos tort action in which damages are awarded,*
18 *the claims against the other defendants shall be reduced, pursuant*
19 *to Section 877 of the Code of Civil Procedure, 877, by the amount*
20 *paid to plaintiff by any other received by or on behalf of a plaintiff*
21 *from an asbestos trust or, if not yet paid as of the date of entry of*
22 *judgment, by the valuation amount of such asbestos trust claim as*
23 *specified in the asbestos trust claim documents, ~~whichever is~~*
24 *greater, and by the amounts paid by other defendants, as specified*
25 *in Section 877.*

26 827.

27 828. (a) *In an asbestos tort action, a court ~~may~~ shall retain*
28 *jurisdiction over the action ~~even after the action is resolved for~~*
29 *purpose of hearing motions or enforcing appropriate remedies*
30 *relating to any issues raised under this chapter, including, without*
31 *limitation, willful concealment or intentional delay in filing of*
32 *asbestos trust claim. for four years after entry of judgment to hear*
33 *motions, order discovery, make determinations regarding reduction*
34 *of claims pursuant to Section 877 for any sums received by a*
35 *plaintiff from an asbestos trust claim or from other defendants, or*
36 *to otherwise make determinations or enforce remedies regarding*
37 *issues related to this chapter.*

38 (b) *This section does not limit or otherwise affect any rights or*
39 *remedies otherwise available under the law.*

1 829. *This chapter shall apply to all asbestos tort actions filed*
 2 *on or after the effective date of the act adding this chapter and all*
 3 *asbestos tort actions pending on the effective date of the act adding*
 4 *this chapter if the initial trial date in the asbestos tort action has*
 5 *not yet passed.*

6 SEC. 3. Section 877 of the Code of Civil Procedure is amended
 7 to read:

8 877. Where a release, dismissal with or without prejudice, or
 9 a covenant not to sue or not to enforce judgment is given in good
 10 faith before verdict or judgment to one or more of a number of
 11 tortfeasors claimed to be liable for the same tort, or to one or more
 12 other co-obligors mutually subject to contribution rights, it shall
 13 have the following effect:

14 (a) (1) It shall not discharge any other such party from liability
 15 unless its terms so provide, but it shall reduce the claims against
 16 the others in the amount stipulated by the release, the ~~dismissal~~
 17 ~~dismissal~~, or the covenant, or in the amount of the consideration
 18 paid for it, whichever is the greater.

19 (2) This subdivision shall also apply to monies ~~received~~
 20 ~~received~~, or to be received, by or on behalf of a claimant from an
 21 ~~Asbestos Trust~~, *asbestos trust*, as defined by Section 821, whether
 22 the monies are received before or after verdict or judgment.

23 (b) It shall discharge the party to whom it is given from all
 24 liability for any contribution to any other parties.

25 (c) This section shall not apply to co-obligors who have
 26 expressly agreed in writing to an apportionment of liability for
 27 losses or claims among themselves.

28 (d) This section shall not apply to a release, dismissal with or
 29 without prejudice, or a covenant not to sue or not to enforce
 30 judgment given to a co-obligor on an alleged contract debt where
 31 the contract was made ~~prior to~~ *before* January 1, 1988.

32 SEC. 4. No reimbursement is required by this act pursuant to
 33 Section 6 of Article XIII B of the California Constitution because
 34 the only costs that may be incurred by a local agency or school
 35 district will be incurred because this act creates a new crime or
 36 infraction, eliminates a crime or infraction, or changes the penalty
 37 for a crime or infraction, within the meaning of Section 17556 of
 38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

O