

AMENDED IN ASSEMBLY JANUARY 4, 2016
AMENDED IN ASSEMBLY SEPTEMBER 10, 2015
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 Section 36 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 that a plaintiff produce, at the same time he or she serves answers to interrogatories, all asbestos trust claim documents, as specified, and would provide that these documents are not subject to a claim of privilege. The bill would also require the plaintiff, in answering interrogatories, to disclose the facts related to his or her alleged exposure to asbestos. The bill would authorize a defendant to file a motion to compel the plaintiff's compliance with the production and disclosure requirements, as described above. The bill

would require the court to retain jurisdiction over an asbestos tort action for 4 years after entry of judgment for certain purposes.

~~Existing law requires a court to grant a petition of a party to a civil action who is over 70 years of age for a preference if the court makes certain findings. Existing law authorizes a court to grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference.~~

~~This bill provide that a plaintiff is entitled to a trial preference if he or she has complied with specific disclosure requirements and would require a plaintiff in an asbestos tort action who files a motion for preference to submit a sworn affidavit that he or she has complied with those disclosure requirements.~~

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

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 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 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~~

1 an illness or condition raising substantial medical doubt of survival
2 of that party beyond six months, and that satisfies the court that
3 the interests of justice will be served by granting the preference.

4 (e) Notwithstanding any other law, the court may in its discretion
5 grant a motion for preference that is supported by a showing that
6 satisfies the court that the interests of justice will be served by
7 granting this preference.

8 (f) Upon the granting of a motion for preference, the court shall
9 set the matter for trial not more than 120 days from that date and
10 there shall be no continuance beyond 120 days from the granting
11 of the motion for preference except for physical disability of a
12 party or a party's attorney, or upon a showing of good cause stated
13 in the record. A continuance shall be for no more than 15 days and
14 no more than one continuance for physical disability may be
15 granted to any party.

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

21 (h) In an asbestos tort action, as defined in Section 821, a
22 plaintiff shall be entitled to preference if he or she has complied
23 with the disclosure requirements of subdivision (a) of Section 822.
24 A plaintiff filing a motion for preference shall submit a sworn
25 affidavit in support of the motion stating that he or she has
26 complied with those disclosure requirements.

27 ~~SEC. 2.~~

28 *SECTION 1.* Chapter 6 (commencing with Section 820) is
29 added to Title 10 of Part 2 of the Code of Civil Procedure, to read:

30

31 CHAPTER 6. ACTIONS RELATING TO ASBESTOS TORT CLAIMS

32

33 820. This chapter shall be known and may be cited as the
34 Asbestos Tort Claim Trust Transparency Act.

35 821. The following terms are defined as follows:

36 (a) "Asbestos tort action" means any action involving an
37 asbestos tort claim.

38 (b) "Asbestos tort claim" means a claim for damages, loss,
39 indemnification, contribution, restitution, or other relief, including
40 punitive damages, related to personal injury or death of a person

1 arising out of an alleged exposure to asbestos, including, without
 2 limitation, lost earnings or earning capacity, medical expenses,
 3 medical monitoring, loss of consortium, loss of the ability to
 4 provide household services, loss of love, companionship, comfort,
 5 care, assistance, protection, affection, society, moral support,
 6 training and guidance, mental or emotional distress, pain and
 7 suffering, or any other harm that may be asserted under law.

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

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

17 (e) “Asbestos trust claim documents” means all writings, as
 18 defined by Section 250 of the Evidence Code, and information
 19 relevant to a pending or potential claim against an asbestos trust,
 20 including any communications between the plaintiff and an
 21 asbestos trust and all proof of claim forms and supplementary or
 22 supporting materials submitted to or required by an asbestos trust,
 23 including, without limitation, affidavits, declarations, interrogatory
 24 responses, deposition and trial testimony, economic loss
 25 documentation, medical records, death certificate and certificate
 26 *certificates and certificates* of official capacity.

27 (f) “Include” or “including” means include or including, but not
 28 limited to.

29 (g) “Plaintiff” means a plaintiff in an asbestos tort action and
 30 any person acting on the plaintiff’s behalf, including, ~~but not~~
 31 ~~limited to,~~ the plaintiff’s attorney.

32 822. (a) A plaintiff in an asbestos tort action shall produce, at
 33 the same time he or she serves answers to interrogatories
 34 propounded pursuant to Article 1 (commencing with Section
 35 2030.010) of Chapter 13 of Title 4 of Part 4, all asbestos trust claim
 36 documents sent to, received from, shown to, exchanged with, or
 37 otherwise disclosed to an established or pending asbestos trust,
 38 including an asbestos trust administrator or his or her agents, a
 39 court supervising an asbestos trust or its agents, or an asbestos
 40 trust claims processing facility or its agents, for any purpose,

1 including supporting a claim for an asbestos-related injury, or
2 providing notice of, or reserving a place for, a future claim for
3 compensation for an asbestos-related injury.

4 (b) A production of documents made pursuant to subdivision
5 (a) shall include all of the following:

6 (1) Ballots.

7 (2) Questionnaires.

8 (3) Submitted or filed forms.

9 (4) Summaries.

10 (5) Claims.

11 (6) Placeholder claims.

12 (7) Requests for extensions.

13 (8) Requests for details.

14 (9) All documents that support the documents described in
15 paragraphs (1) to (8), inclusive.

16 (10) All communications related to the documents described in
17 paragraphs (1) to (8), inclusive.

18 (11) All documents filed, lodged, or submitted on or after
19 January 1, 2017, pursuant to Rule 2019 of the Federal Rules of
20 Bankruptcy Procedure.

21 (c) The plaintiff shall supplement the information and materials
22 produced pursuant to subdivisions (a), (b), and (d), no later than
23 five days before trial. Documents related to bankruptcy claims and
24 declarations shall be produced when those documents and
25 declarations are received or submitted, but no later than five days
26 before trial.

27 (d) In addition to the production required by subdivisions (a)
28 and (b), declarations and affidavits in the plaintiff's possession
29 that have been circulated to a person or entity other than the
30 plaintiff and that include facts regarding the plaintiff's or
31 decedent's exposure to asbestos or an asbestos-related injury shall
32 be produced for each asbestos tort claim.

33 (e) Documents described in subdivisions (a), (b), and (d) are
34 not subject to a claim of privilege and shall be produced for each
35 asbestos tort claim.

36 (f) (1) In answering interrogatories propounded pursuant to
37 Article 1 (commencing with Section 2030.010) of Chapter 13 of
38 Title 4 of Part 4, the plaintiff shall disclose the facts relating to his
39 or her alleged exposure to asbestos, whether from products or
40 premises attributable to the defendant that propounded the

1 interrogatories or attributable to another entity, and regardless of
 2 whether the facts have been, or ever will be, included in an asbestos
 3 tort claim submitted to a third party for the ~~purposes~~ *purpose* of
 4 obtaining compensation for an asbestos-related injury.

5 (2) The plaintiff shall not object or refuse to disclose facts
 6 related to his or her asbestos exposure in answering interrogatories
 7 on the basis of any of the following:

8 (A) An asbestos trust claim has not been made.

9 (B) An asbestos trust claim will not be made.

10 (C) The facts appear in an otherwise privileged document,
 11 including a signed affidavit or unsubmitted bankruptcy trust claim
 12 form.

13 (3) The attorney-client privilege and the attorney work product
 14 privilege are not waived by disclosing facts pursuant to this
 15 subdivision.

16 (g) If a plaintiff fails to comply with requirements of
 17 subdivisions (a) to (d), inclusive, the defendant may file a motion
 18 to compel compliance with the requirements of subdivisions (a)
 19 to (d), inclusive.

20 823. At the same time a plaintiff answers interrogatories and
 21 produces documents pursuant to subdivisions (a), (b), and (d), of
 22 Section 822, the plaintiff shall execute and provide an
 23 authorization, as may be required by an asbestos trust, to facilitate
 24 the release of asbestos trust claim documents sought by the
 25 defendant.

26 824. (a) In an asbestos tort action, a court shall retain
 27 jurisdiction over the action for four years after entry of judgment
 28 to hear motions, order discovery, make determinations regarding
 29 reduction of claims pursuant to Section 877 for any sums received
 30 by a plaintiff from an asbestos trust or from other defendants,
 31 whether received before or after entry of judgment, or to otherwise
 32 make determinations or enforce remedies regarding issues related
 33 to this chapter.

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

36 825. This chapter ~~shall apply~~ *applies* to all asbestos tort actions
 37 filed on or after January 1, 2017, and all asbestos tort actions

- 1 pending on January 1, 2017, if the initial trial date in the asbestos
- 2 tort action has not yet passed.

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