

**ASSEMBLY BILL**

**No. 2315**

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**Introduced by Assembly Member Olsen  
(Principal coauthor: Assembly Member Gray)  
(Coauthors: Assembly Members Gallagher and Wagner)**

February 18, 2016

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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 2315, as introduced, Olsen. 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 disclose specified information with respect to any asbestos trusts, as defined, against which the plaintiff has or could pursue a claim, and would entitle a defendant to discover 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. By expanding the scope of an existing crime, this 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 ~~provision of law~~, the court may  
28 in its discretion grant a motion for preference that is supported by  
29 a showing that satisfies the court that the interests of justice will  
30 be served by granting this preference.

1 (f) Upon the granting of such a motion for preference, the court  
2 shall set the matter for trial not more than 120 days from that date  
3 and there shall be no continuance beyond 120 days from the  
4 granting of the motion for preference except for physical disability  
5 of a party or a party's attorney, or upon a showing of good cause  
6 stated in the record. Any continuance shall be for no more than 15  
7 days and no more than one continuance for physical disability may  
8 be granted to any party.

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

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

17 (1) *That he or she has complied with the disclosure requirements*  
18 *of subdivision (a) of Section 822.*

19 (2) *That he or she has made a good faith effort to determine if*  
20 *there are any asbestos trusts against which he or she has a basis*  
21 *to make a claim and, if there are, that he or she has made claims*  
22 *with all of those asbestos trusts.*

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

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

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30 CHAPTER 6. ACTIONS RELATING TO ASBESTOS TORT CLAIMS

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

34 821. The following terms are defined as follows:

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

37 (b) "Asbestos tort claim" means a claim for damages, loss,  
38 indemnification, contribution, restitution, or other relief, including  
39 punitive damages, related to personal injury or death of a person  
40 for whom an asbestos trust may be responsible, including, without

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

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

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

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

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

29 (A) A sworn statement, under penalty of perjury, identifying  
30 each asbestos trust claim that the plaintiff has filed or has basis to  
31 file against an asbestos trust and, for each such asbestos trust claim,  
32 whether there has been a request to defer, delay, suspend, or toll  
33 the claim.

34 (B) All asbestos trust claim documents that the plaintiff has  
35 submitted to an asbestos trust.

36 (C) All documents relating to communications between, or on  
37 behalf of, the plaintiff and an asbestos trust.

38 (2) The documents described in paragraph (1) shall be served  
39 not later than 90 days after the filing of the complaint in an asbestos

1 tort action, except under the following circumstances in which  
2 case the documents shall be served in the lesser time:

3 (A) Within 30 days, in an asbestos tort action in which the  
4 plaintiff is awarded a preferential trial date pursuant to Section 36.

5 (B) On or before March 1, 2017, with respect to an asbestos tort  
6 action that is currently pending on or before January 1, 2017.

7 (b) The plaintiff shall supplement the information and materials  
8 served pursuant to subdivision (a) within 30 days of filing any  
9 additional asbestos trust claims, supplementing an existing asbestos  
10 trust claim, or receiving additional information or materials related  
11 to any asbestos trust claim and, to the extent not earlier  
12 supplemented, within seven days of trial.

13 (c) This section shall not prevent the court from requiring  
14 disclosures for an asbestos trust claim that are in addition to those  
15 required by this section.

16 823. (a) A defendant in an asbestos tort action may seek  
17 discovery of relevant materials from an asbestos trust identified  
18 by the plaintiff pursuant to Section 822 that concern the plaintiff.  
19 The plaintiff may not claim privilege or confidentiality to bar  
20 discovery under this section and shall provide consent or other  
21 authorization as may be required by an asbestos trust to facilitate  
22 the release of relevant asbestos trust claim documents sought by  
23 the defendant.

24 (b) Asbestos trust claim documents shall be admissible as  
25 evidence in an asbestos tort action, including, without limitation,  
26 to prove alternative causation for a plaintiff's injury or to prove  
27 that responsibility for a plaintiff's injury should be apportioned.  
28 Claims of privilege do not apply to asbestos trust claim documents.

29 824. If a defendant identifies an asbestos trust that plaintiff  
30 failed to disclose as required by Section 822 as to which the  
31 defendant believes a plaintiff has a viable claim, the defendant  
32 may file a motion for an order for any of the following:

33 (a) To require the plaintiff to file a claim against the improperly  
34 withheld asbestos trust.

35 (b) To stay the action or vacate the trial date until the plaintiff  
36 files a claim against the improperly withheld asbestos trust.

37 (c) Any other relief that the court deems appropriate in its  
38 discretion for good cause shown.

39 825. The court may stay an asbestos tort action, decline to  
40 assign an initial trial date, deny a motion for preference under

1 Section 36, vacate or continue the trial date in asbestos tort action,  
2 or impose any other remedies in its discretion in any of the  
3 following circumstances:

4 (a) Identification by a plaintiff of an asbestos trust pursuant to  
5 Section 822 for which the plaintiff has a basis to file but has not  
6 yet filed an asbestos trust claim.

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

9 (c) Upon the granting of a defendant's motion pursuant to  
10 Section 824.

11 826. In an asbestos tort action in which damages are awarded,  
12 the claims against the other defendants shall be reduced, pursuant  
13 to Section 877, by the amount paid to a plaintiff by any other  
14 asbestos trust or, if not yet paid as of the date of entry of judgment,  
15 by the valuation amount of such asbestos trust claim as specified  
16 in the asbestos trust claim documents, whichever is greater.

17 827. In an asbestos tort action, a court may retain jurisdiction  
18 over the action even after the action is resolved for purposes of  
19 hearing motions or enforcing appropriate remedies relating to any  
20 issues raised under this chapter, including, without limitation,  
21 willful concealment or intentional delay in the filing of an asbestos  
22 trust claim.

23 SEC. 3. Section 877 of the Code of Civil Procedure is amended  
24 to read:

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

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

36 (2) *This subdivision shall also apply to moneys received by or*  
37 *on behalf of a claimant from an asbestos trust, as defined by*  
38 *Section 821, whether the moneys are received before or after a*  
39 *verdict or judgment.*

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

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

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

10 SEC. 4. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.