

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 ~~Sections 36 and 877~~ *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 ~~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.~~ *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.

~~This bill would require a plaintiff to serve certain sworn statements. By expanding the scope of an existing crime, 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.~~

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: ~~yes-no~~. State-mandated local program: ~~yes-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 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

1 case as a whole. A civil action subject to subdivision (a) shall be
2 given preference over a case subject to this subdivision.

3 (c) Unless the court otherwise orders:

4 (1) A party may file and serve a motion for preference supported
5 by a declaration of the moving party that all essential parties have
6 been served with process or have appeared.

7 (2) At any time during the pendency of the action, a party who
8 reaches 70 years of age may file and serve a motion for preference.

9 (d) In its discretion, the court may also grant a motion for
10 preference that is accompanied by clear and convincing medical
11 documentation that concludes that one of the parties suffers from
12 an illness or condition raising substantial medical doubt of survival
13 of that party beyond six months, and that satisfies the court that
14 the interests of justice will be served by granting the preference.

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

19 (f) Upon the granting of a motion for preference, the court shall
20 set the matter for trial not more than 120 days from that date and
21 there shall be no continuance beyond 120 days from the granting
22 of the motion for preference except for physical disability of a
23 party or a party's attorney, or upon a showing of good cause stated
24 in the record. A continuance shall be for no more than 15 days and
25 no more than one continuance for physical disability may be
26 granted to any party.

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

32 (h) In an asbestos tort action, as defined in Section 821, a
33 plaintiff *shall be entitled to preference if he or she has complied*
34 *with the disclosure requirements of subdivision (a) of Section 822.*
35 *A plaintiff filing a motion for preference shall submit a sworn*
36 *affidavit in support of the motion stating ~~each of the following:~~*
37 *that he or she has complied with those disclosure requirements.*

38 ~~(1) That he or she has complied with the disclosure requirements~~
39 ~~of subdivision (a) of Section 822.~~

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

5 ~~(i) A plaintiff in an asbestos tort action, as defined in Section~~
 6 ~~821, shall not be entitled to a trial preference pursuant to this~~
 7 ~~section if the plaintiff is subject to an order issued pursuant to~~
 8 ~~Section 825.~~

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

11
 12 CHAPTER 6. ACTIONS RELATING TO ASBESTOS TORT CLAIMS

13
 14 820. This chapter shall be known; and may be cited as; the
 15 Asbestos Tort Claim Trust Transparency Act.

16 821. The following terms are defined as follows:

17 (a) “Asbestos tort action” means any action involving an
 18 asbestos tort claim.

19 (b) “Asbestos tort claim” means a claim for damages, loss,
 20 indemnification, contribution, restitution, or other relief, including
 21 punitive damages, related to personal injury or death of a person
 22 arising out of an alleged exposure to asbestos, including, without
 23 limitation, lost earnings or earning capacity, medical expenses,
 24 medical monitoring, loss of consortium, loss of the ability to
 25 provide household services, loss of love, companionship, comfort,
 26 care, assistance, protection, affection, society, moral support,
 27 training and guidance, mental or emotional distress, pain and
 28 suffering, or any other harm that may be asserted under law.

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

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

38 (e) “Asbestos trust claim documents” means all writings, as
 39 defined by Section 250 of the Evidence Code, and information
 40 relevant to a pending or potential claim against an asbestos trust,

1 including any communications between the plaintiff and an
2 asbestos trust and all proof of claim forms and supplementary or
3 supporting materials submitted to or required by an asbestos, trust,
4 including, without limitation, affidavits, declarations, interrogatory
5 responses, deposition and trial testimony, economic loss
6 documentation, medical records, death certificate and certificate
7 of official capacity.

8 (f) *“Include” or “including” means include or including, but*
9 *not limited to.*

10 (f)

11 (g) *“Plaintiff” means a plaintiff in an asbestos tort action and*
12 *any person acting on the plaintiff’s behalf, including, but not*
13 *limited to, the plaintiff’s attorney.*

14 ~~822. (a) (1) The plaintiff in an asbestos tort claim shall serve~~
15 ~~the following:~~

16 ~~(A) A sworn statement identifying each asbestos trust claim,~~
17 ~~and for each asbestos trust claim, whether there has been a request~~
18 ~~to defer, delay, suspend, or toll the claim. The sworn statement~~
19 ~~shall also state the dollar amount that the plaintiff has requested~~
20 ~~and received for each asbestos trust claim.~~

21 ~~(B) All asbestos trust claim documents.~~

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

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

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

31 ~~(b) The plaintiff shall supplement the information and materials~~
32 ~~served pursuant to subdivision (a) within 30 days of filing any~~
33 ~~additional asbestos trust claims, supplementing an existing asbestos~~
34 ~~trust claim, or receiving additional information or materials related~~
35 ~~to any asbestos trust claim and, to the extent not earlier~~
36 ~~supplemented, no later than seven days before trial.~~

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

1 ~~823. (a) A defendant in an asbestos tort action may seek~~
 2 ~~discovery of relevant materials from any asbestos trust that~~
 3 ~~concerns the plaintiff. The plaintiff may not claim privilege or~~
 4 ~~confidentiality to bar discovery under this section and shall provide~~
 5 ~~consent or other authorization as may be required by an asbestos~~
 6 ~~trust to facilitate the release of relevant asbestos trust claim~~
 7 ~~documents sought by the defendant.~~

8 ~~(b) Asbestos trust claim documents shall be admissible as~~
 9 ~~evidence in an asbestos tort action, including, without limitation,~~
 10 ~~to prove alternative causation for a plaintiff's injury or to prove~~
 11 ~~that the fault or responsibility for a plaintiff's injury should be~~
 12 ~~apportioned. Claims of privilege shall not apply to asbestos trust~~
 13 ~~claim documents.~~

14 ~~824. (a) If a defendant identifies an asbestos trust that a~~
 15 ~~plaintiff failed to disclose as required by Section 822 as to which~~
 16 ~~the defendant reasonably believes the plaintiff has a viable asbestos~~
 17 ~~trust claim, the defendant may file a motion for an order for any~~
 18 ~~of the following:~~

19 ~~(1) To require the plaintiff to file a claim against all such~~
 20 ~~asbestos trusts.~~

21 ~~(2) To stay the action or vacate the trial date until the plaintiff~~
 22 ~~files an asbestos trust claim against all such asbestos trusts.~~

23 ~~(3) Any other relief that the court deems appropriate in its~~
 24 ~~discretion for good cause shown.~~

25 ~~(b) Absent new evidence of exposure to other asbestos products~~
 26 ~~or exposure to asbestos products at work sites or locations not~~
 27 ~~previously disclosed by the plaintiff in discovery, a defendant shall~~
 28 ~~only file one motion naming all the asbestos trusts against which~~
 29 ~~the defendant reasonably believes the plaintiff has a viable asbestos~~
 30 ~~trust claim that the plaintiff has not previously disclosed.~~

31 ~~(c) The court may award a plaintiff who successfully opposes~~
 32 ~~a defendant's motion brought pursuant to this section reasonable~~
 33 ~~attorney's fees and costs incurred in opposing the defendant's~~
 34 ~~motion, upon the plaintiff's request and showing of good cause.~~

35 ~~825. In an asbestos tort action, the court shall stay the action,~~
 36 ~~decline to assign an initial trial date, deny a motion for preference~~
 37 ~~under Section 36 of the Code of Civil Procedure, vacate or continue~~
 38 ~~the trial date, or impose any other remedies in its discretion,~~
 39 ~~including, but not limited to, imposing sanctions pursuant to~~

1 Sections ~~2023.010 and 2023.030~~, in any of the following
2 circumstances:

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

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

8 (c) ~~Upon granting a defendant's motion pursuant to Section~~
9 ~~824.~~

10 826. ~~No earlier than 60 days after, and no later than 120 days~~
11 ~~after, entry of judgment, the plaintiff in an asbestos tort action~~
12 ~~shall serve the following:~~

13 (a) ~~A sworn statement that includes all of the following:~~

14 (1) ~~Identification of each asbestos trust claim and, for each~~
15 ~~asbestos trust claim, whether there has been a request to defer,~~
16 ~~delay, suspend, or toll the claim.~~

17 (2) ~~A statement of the dollar amount that the plaintiff has~~
18 ~~requested and received from each asbestos trust claim.~~

19 (3) ~~A statement that the plaintiff has filed all viable asbestos~~
20 ~~trust claims and no additional asbestos trust claims will be~~
21 ~~subsequently filed.~~

22 (b) ~~All asbestos trust claim documents not previously served.~~

23 827. ~~In an asbestos tort action in which damages are awarded,~~
24 ~~the claims against the other defendants shall be reduced, pursuant~~
25 ~~to Section 877, by the amount received by or on behalf of a plaintiff~~
26 ~~from an asbestos trust or, if not yet paid as of the date of entry of~~
27 ~~judgment, by the valuation amount of such asbestos trust claim as~~
28 ~~specified in the asbestos trust claim documents, and by the amounts~~
29 ~~paid by other defendants, as specified in Section 877.~~

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

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

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

5 *(1) Ballots.*

6 *(2) Questionnaires.*

7 *(3) Submitted or filed forms.*

8 *(4) Summaries.*

9 *(5) Claims.*

10 *(6) Placeholder claims.*

11 *(7) Requests for extensions.*

12 *(8) Requests for details.*

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

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

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

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

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

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

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

1 of whether the facts have been, or ever will be, included in an
2 asbestos tort claim submitted to a third party for the purposes of
3 obtaining compensation for an asbestos-related injury.

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

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

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

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

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

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

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

25 ~~828.~~

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 ~~claim~~ 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.

36 ~~829.~~

37 825. This chapter shall apply to all asbestos tort actions filed
38 on or after ~~the effective date of the act adding this chapter~~ January
39 1, 2017, and all asbestos tort actions pending on ~~the effective date~~

1 of the act adding this chapter *January 1, 2017*, if the initial trial
2 date in the asbestos tort action has not yet passed.

3 ~~SEC. 3. Section 877 of the Code of Civil Procedure is amended~~
4 ~~to read:~~

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

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

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

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

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

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

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

O