

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 introduced, 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.

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.
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 continuance shall be for no more than 15
4 days and no more than one continuance for physical disability may
5 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 a motion for preference shall submit a sworn*
13 *affidavit in support stating each of the following:*

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

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

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

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

26
27 CHAPTER 6. ACTIONS RELATING TO ASBESTOS TORT CLAIMS
28

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

31 821. The following terms are defined as follows:

32 (a) “Asbestos tort claim” means a claim for damages, loss,
33 indemnification, contribution, restitution, or other relief, including
34 punitive damages, related to personal injury or death of a person
35 for whom an asbestos trust may be responsible, including, without
36 limitation, lost earnings or earning capacity, medical expenses,
37 medical monitoring, loss of consortium, loss of the ability to
38 provide household services, loss of love, companionship, comfort,
39 care, assistance, protection, affection, society, moral support,

1 training and guidance, mental or emotional distress, or any other
2 harm for which an asbestos trust claim may be asserted under law.

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

10 (c) “Asbestos trust claim” means any asbestos tort claim filed
11 or that could be filed with an asbestos trust.

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

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

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

30 (B) All asbestos trust claim documents that plaintiff has
31 submitted to an asbestos trust.

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

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

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

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

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

9 (c) Nothing in this section shall prevent the court from requiring
10 disclosures for an asbestos trust claim that are in addition to those
11 required by this section.

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

20 (b) Asbestos trust claim documents shall be admissible as
21 evidence in an asbestos tort action, including, without limitation,
22 to prove alternative causation for a plaintiff's injury or to prove
23 that responsibility for plaintiff's injury should be apportioned. No
24 claims of privilege shall apply to asbestos trust claim documents.

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

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

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

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

35 825. The court may stay an asbestos tort action, decline to
36 assign an initial trial date, deny a motion for preference under
37 Section 36 of the Code of Civil Procedure, vacate or continue the
38 trial date in asbestos tort action, or impose any other remedies in
39 its discretion in any of the following circumstances:

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

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

6 (c) Upon the granting of a defendant’s motion pursuant to
7 Section 824.

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

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

21 SEC. 3. Section 877 of the Code of Civil Procedure is amended
22 to read:

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

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

34 (2) *This subdivision shall also apply to monies received by or*
35 *on behalf of a claimant from an Asbestos Trust, as defined by*
36 *Section 821, whether the monies are received before or after*
37 *verdict or judgment.*

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

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

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

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

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