

State of Wisconsin



2013 Assembly Bill 19

Date of enactment: **March 27, 2014**

Date of publication*: **March 28, 2014**

2013 WISCONSIN ACT 154

AN ACT *to create* 802.025 of the statutes; **relating to:** torts and asbestos trusts.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 802.025 of the statutes is created to read:
802.025 Pleadings, discovery, and damages in certain personal injury actions. (1) **DEFINITIONS.** In this section:

(a) "Asbestos trust" means a trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative or legal action, bankruptcy, agreement, or other settlement or pursuant to [11 USC 524 \(g\)](#) or [49 USC 40101](#), that is intended to provide compensation to claimants alleging personal injury claims as a result of harm, also potentially compensable in the immediate action, for which the entity creating the trust, qualified settlement fund, compensation fund, or claims facility is alleged to be responsible.

(b) "Personal injury claim" means any claim for damages, loss, indemnification, contribution, restitution or other relief, including punitive damages, that is related to bodily injury or another harm, including loss of consortium, society, or companionship, loss of support, personal injury or death, mental or emotional injury, risk or fear of disease or other injury, or costs of medical monitoring or surveillance and that is allegedly caused by or related to the claimant's exposure to asbestos. "Personal injury claim" includes a claim made by or on behalf of the person who claims the injury or harm or by or on behalf of the person's representative, spouse, parent, minor

child, or other relative. "Personal injury claim" does not include a claim compensable by the injured patients and families compensation fund or a claim for compensatory benefits pursuant to worker's compensation or veterans benefits.

(c) "Trust claims materials" means all documents and information relevant or related to a pending or potential claim against an asbestos trust. "Trust claims materials" include claims forms and supplementary materials, proofs of claim, affidavits, depositions and trial testimony, work history, and medical and health records.

(d) "Trust governance document" means any document that determines eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization, for an asbestos trust.

(2) **REQUIRED DISCLOSURES BY PLAINTIFF.** (a) Within 45 days after the effective date of this paragraph [LRB inserts date], or within 45 days after joinder of issues in action subject to this section, whichever is later, the plaintiff shall provide to all parties a sworn statement identifying each personal injury claim he or she has filed or reasonably anticipates filing against an asbestos trust. The statement for each claim shall include the name, address, and contact information for the asbestos trust, the amount claimed by the plaintiff, the date that the plaintiff filed the claim, the disposition of the claim and whether there has been a request to defer, delay, suspend, or toll the claim against the asbestos trust.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(b) Within 60 days after the effective date of this paragraph ... [LRB inserts date], or within 60 days after joinder of issues in an action subject to this section, whichever is later, the plaintiff shall provide to all parties all of the following:

1. For each personal injury claim he or she has filed against an asbestos trust, a copy of the final executed proof of claim, all trust documents, including trust claims materials, trust governance documents, any documents reflecting the current status of the claim and, if the claim is settled, all documents relating to the settlement of the claim.

2. A list of each personal injury claim he or she reasonably anticipates filing against an asbestos trust, including the name, address, and contact information for the asbestos trust, and the amount he or she anticipates claiming against the trust.

(c) The plaintiff shall supplement the information and materials he or she provides under pars. (a) and (b) within 30 days after the plaintiff files an additional claim or receives additional information or documents related to any claim he or she makes against an asbestos trust.

(3) DISCOVERY; USE OF MATERIALS. (a) Trust claims materials and trust governance documents are admissible in evidence. No claims of privilege apply to trust claims materials or trust governance documents.

(b) A defendant in a personal injury claim may seek discovery against an asbestos trust identified under sub. (2) or (4). The plaintiff may not claim privilege or confidentiality to bar discovery, and the plaintiff shall provide consents or other expression of permission that may be required by the asbestos trust to release information and materials sought by the defendant.

(4) DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE ASBESTOS TRUSTS. (a) If any defendant identifies an asbestos trust not named by the plaintiff against which the defendant reasonably believes the plaintiff should file a claim, upon motion by the defendant, the court shall determine whether to order the plaintiff to file a claim against the asbestos trust. The defendant shall provide all documentation it possesses or is aware of in support of the motion.

(b) The court shall establish a deadline for filing a motion under par. (a). The court shall ensure that any deadline established pursuant to this paragraph affords the parties an adequate opportunity to investigate the defendant's claims.

(c) If the court orders the plaintiff to file a claim with the asbestos trust, the court shall stay the immediate action until the plaintiff swears or affirms that he or she has filed the claim against the asbestos trust and the plaintiff provides to the court and to all parties a final executed proof of claim and all other trust claims materials relevant to each claim the plaintiff has against an asbestos trust.

(d) The court may allow additional time for discovery or may stay the proceedings for other good cause shown.

(e) Not less than 30 days prior to trial, the court shall enter into the record a trust claims document that identifies each personal injury claim the plaintiff has made against an asbestos trust.

(5) USE OF TRUST CLAIM MATERIALS AT TRIAL. Trust claim materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the trust was established to provide compensation and that such exposure may be a substantial factor in causing the plaintiff's injury that is at issue in the action.

(6) DAMAGES; ASSIGNMENT OF CLAIMS. (a) If a verdict is entered in favor of the plaintiff in an action subject to this section and the defendant is found to be 51 percent or more causally negligent or responsible for the plaintiff's entire damages under s. 895.045 (1) or (3) (d), the plaintiff may not collect any amount of damages until after the plaintiff assigns to the defendant all pending, current, and future rights or claims he or she has or may have for a personal injury claim against an asbestos trust.

(b) If a verdict is entered in favor of the plaintiff in an action subject to this section and the defendant is found to be less than 51 percent causally negligent or responsible for the plaintiff's entire damages under s. 895.045 (1) or (3) (d), the plaintiff may not collect any amount of damages until after the plaintiff assigns to the defendant all future rights or claims he or she has or may have for a personal injury claim against an asbestos trust.

(7) FAILURE TO PROVIDE INFORMATION; SANCTIONS. A plaintiff who fails to timely provide all of the information required under sub. (2) or (4) is subject to ss. 802.05, 804.12, 805.03, and 895.044.

SECTION 2. Initial applicability.

(1) This act first applies to actions filed on the effective date of this subsection.