



**SENATE SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 19**

March 11, 2014 – Offered by Senator GROTHMAN.

1 **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:

2 **SECTION 1.** 802.025 of the statutes is created to read:

3 **802.025 Pleadings, discovery, and damages in certain personal injury**
4 **actions. (1) DEFINITIONS.** In this section:

5 (a) “Asbestos trust” means a trust, qualified settlement fund, compensation
6 fund, or claims facility created as a result of an administrative or legal action,
7 bankruptcy, agreement, or other settlement or pursuant to 11 USC 524 (g) or 49 USC
8 40101, that is intended to provide compensation to claimants alleging personal
9 injury claims as a result of harm, also potentially compensable in the immediate
10 action, for which the entity creating the trust, qualified settlement fund,
11 compensation fund, or claims facility is alleged to be responsible.

1 (b) “Personal injury claim” means any claim for damages, loss, indemnification,
2 contribution, restitution or other relief, including punitive damages, that is related
3 to bodily injury or another harm, including loss of consortium, society, or
4 companionship, loss of support, personal injury or death, mental or emotional injury,
5 risk or fear of disease or other injury, or costs of medical monitoring or surveillance
6 and that is allegedly caused by or related to the claimant’s exposure to asbestos.
7 “Personal injury claim” includes a claim made by or on behalf of the person who
8 claims the injury or harm or by or on behalf of the person’s representative, spouse,
9 parent, minor child, or other relative. “Personal injury claim” does not include a
10 claim compensable by the injured patients and families compensation fund or a claim
11 for compensatory benefits pursuant to worker’s compensation or veterans benefits.

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

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

20 **(2) REQUIRED DISCLOSURES BY PLAINTIFF.** (a) Within 45 days after the effective
21 date of this paragraph [LRB inserts date], or within 45 days after joinder of issues
22 in action subject to this section, whichever is later, the plaintiff shall provide to all
23 parties a sworn statement identifying each personal injury claim he or she has filed
24 or reasonably anticipates filing against an asbestos trust. The statement for each
25 claim shall include the name, address, and contact information for the asbestos trust,

1 the amount claimed by the plaintiff, the date that the plaintiff filed the claim, the
2 disposition of the claim and whether there has been a request to defer, delay,
3 suspend, or toll the claim against the asbestos trust.

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

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

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

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

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

22 (b) A defendant in a personal injury claim may seek discovery against an
23 asbestos trust identified under sub. (2) or (4). The plaintiff may not claim privilege
24 or confidentiality to bar discovery, and the plaintiff shall provide consents or other

1 expression of permission that may be required by the asbestos trust to release
2 information and materials sought by the defendant.

3 **(4) DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE ASBESTOS TRUSTS.**

4 (a) If any defendant identifies an asbestos trust not named by the plaintiff against
5 which the defendant reasonably believes the plaintiff should file a claim, upon
6 motion by the defendant, the court shall determine whether to order the plaintiff to
7 file a claim against the asbestos trust. The defendant shall provide all
8 documentation it possesses or is aware of in support of the motion.

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

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

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

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

22 **(5) USE OF TRUST CLAIM MATERIALS AT TRIAL.** Trust claim materials that are
23 sufficient to entitle a claim to consideration for payment under the applicable trust
24 governance documents may be sufficient to support a jury finding that the plaintiff
25 may have been exposed to products for which the trust was established to provide

1 compensation and that such exposure may be a substantial factor in causing the
2 plaintiff's injury that is at issue in the action.

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

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

16 **(7) FAILURE TO PROVIDE INFORMATION; SANCTIONS.** A plaintiff who fails to timely
17 provide all of the information required under sub. (2) or (4) is subject to ss. 802.05,
18 804.12, 805.03, and 895.044.

19 **SECTION 2. Initial applicability.**

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

21 (END)