

2013 Assembly Bill 19 (LRB -0002)

An Act to create 802.025 of the statutes; relating to: torts and personal injury trusts. (FE)

2013

02-15. A. Introduced by Representatives **Jacque, Honadel, Kuglitsch, Murphy, Schraa, Spiros, Stone, Strachota, Thiesfeldt and Weininger**; cosponsored by Senators **Grothman and Lasee** 41

02-15. A. Read first time and referred to Committee on Judiciary 41

04-04. A. Fiscal estimate received

04-04. A. Public hearing held

04-04. A. Assembly Substitute Amendment 1 offered by Representative J. Ott (**LRB s0022**) 101

04-09. A. **LRB corrections** (Assembly Substitute Amendment 1) 106

04-23. A. Assembly Substitute Amendment 2 offered by Representative Wachs (**LRB s0035**) 129

04-23. A. **LRB correction** (Assembly Substitute Amendment 1) 130

04-25. A. Assembly Amendment 1 to Assembly Substitute Amendment 1 offered by Representative J. Ott (**LRB a0326**) 131

04-25. A. Executive action taken

05-01. A. Report Assembly Amendment 1 to Assembly Substitute Amendment 1 adoption recommended by Committee on Judiciary, Ayes 7, Noes 1 137

05-01. A. Report Assembly Substitute Amendment 1 adoption recommended by Committee on Judiciary, Ayes 6, Noes 2 137

05-01. A. Report passage as amended recommended by Committee on Judiciary, Ayes 6, Noes 2 137

05-01. A. Referred to Committee on Rules 137

05-02. A. Placed on calendar 5-8-2013 by Committee on Rules

05-07. A. Assembly Substitute Amendment 3 offered by Representatives Hebl, Wachs and Goyke (**LRB s0045**) 144

05-07. A. Assembly Amendment 2 to Assembly Substitute Amendment 1 offered by Representatives Wachs, Hebl and Goyke (**LRB a0370**) 144

05-07. A. Assembly Amendment 3 to Assembly Substitute Amendment 1 offered by Representatives Wachs, Hebl and Goyke (**LRB a0389**) 144

05-07. A. Made a special order of business at 1:01 PM on 5-8-2013 pursuant to Assembly Resolution 9 152

05-08. A. Read a second time 156

05-08. A. Assembly Substitute Amendment 3 laid on table, Ayes 59, Noes 39 156

05-08. A. Assembly Amendment 1 to Assembly Substitute Amendment 1 **adopted** 156

05-08. A. Assembly Amendment 2 to Assembly Substitute Amendment 1 placed after Assembly Amendment 3 to Assembly Substitute Amendment 1 156

05-08. A. Assembly Amendment 3 to Assembly Substitute Amendment 1 laid on table, Ayes 59, Noes 39 156

05-08. A. Assembly Amendment 2 to Assembly Substitute Amendment 1 laid on table, Ayes 59, Noes 39 156

05-08. A. Assembly Substitute Amendment 1 **adopted** 157

05-08. A. Ordered to a third reading 157

05-08. A. Rules suspended 157

05-08. A. Read a third time and **passed**, Ayes 58, Noes 39 157

05-08. A. Ordered immediately messaged 157

05-09. S. Received from Assembly 215

05-10. S. Read first time and referred to committee on Judiciary and Labor 217

10-09. S. Executive action taken

10-10. S. Report concurrence recommended by Committee on Judiciary and Labor, Ayes 3, Noes 2 405

10-10. S. Available for scheduling

2014

03-07. S. Placed on calendar 3-11-2014 pursuant to Senate Rule 18(1) 743

03-11. S. Placed at the foot of the 12th on the calendar of 3-11-2014, Ayes 18, Noes 15 753

03-11. S. Senate Amendment 1 offered by Senators Carpenter, Hansen, L. Taylor, Vinehout, Shilling, Miller, T. Cullen, C. Larson and Lassa (**LRB a2090**) 751

03-11. S. Senate Substitute Amendment 1 offered by Senator Grothman (**LRB s0379**) 751

03-11. S. Senate Amendment 1 to Senate Substitute Amendment 1 offered by Senators Carpenter, Hansen, L. Taylor, Vinehout, Shilling, Miller, T. Cullen, C. Larson and Lassa (**LRB a2102**) 751

03-11. S. Read a second time 765

03-11. S. Senate Amendment 1 to Senate Substitute Amendment 1 laid on table 765

03-11. S. Refused to refer to committee on Judiciary and Labor, Ayes 14, Noes 18 765

03-11. S. **Senate Substitute Amendment 1 adopted** 765

03-11. S. Ordered to a third reading 765

03-12. S. Read a third time and **concurred in** as amended, Ayes 17, Noes 16 770

03-12. S. Ordered immediately messaged 770

03-12. A. Received from Senate amended and concurred in as amended (Senate Substitute Amendment 1 adopted) 737

03-18. A. Referred to committee on Rules 751
03-18. A. Made a special order of business at 10:01 AM on 3-20-2014 pursuant to Assembly Resolution 28 766
03-20. A. Assembly Amendment 1 to Senate Substitute Amendment 1 offered by Representatives Hebl, Goyke,
Wachs and Hulsey (**LRB a2205**)
03-20. A. Assembly Amendment 1 to Senate Substitute Amendment 1 laid on table, Ayes 55, Noes 38
03-20. A. Senate Substitute Amendment 1 **concurred in**, Ayes 55, Noes 38, Paired 2
03-20. A. Action ordered immediately messaged



2013

ENROLLED BILL

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ADOPTED DOCUMENTS:

Orig Engr 5 SubAmdt 1 13 5037912

Amendments to above (if none, write "NONE"): None

Corrections - show date (if none, write "NONE"): None

Topic Rel

3-25-14 JR Miller
Date Enrolling Drafter



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0379/2
PJH:wlj:jm

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)