

**ASSEMBLY BILL**

**No. 1056**

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**Introduced by Assembly Member Kiley**

February 16, 2017

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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 1056, as introduced, Kiley. Asbestos Tort Trust Transparency Act and trial preferences.

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 sworn statements. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

Existing law authorizes certain parties to petition the court for preference, and, if the court grants a motion for preference, requires the court to set the matter for trial not more than 120 days from the date the motion for preference is granted.

This bill would provide that a party to a civil action who is a veteran, as defined, is entitled to preference ahead of all parties who are not veterans.

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.

1 (e) Notwithstanding any other ~~provision~~ of law, the court may  
2 in its discretion grant a motion for preference that is supported by  
3 a showing that satisfies the court that the interests of justice will  
4 be served by granting this preference.

5 (f) Upon the granting of ~~such~~ a motion for preference, the court  
6 shall set the matter for trial not more than 120 days from that date  
7 and there shall be no continuance beyond 120 days from the  
8 granting of the motion for preference except for physical disability  
9 of a party or a party's attorney, or upon a showing of good cause  
10 stated in the record. ~~Any~~ A continuance shall be for no more than  
11 15 days and no more than one continuance for physical disability  
12 may be granted to any party.

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

18 (h) *In an asbestos tort action, as defined in Section 821, a*  
19 *plaintiff filing a motion for preference shall submit a sworn*  
20 *affidavit in support of the motion stating each of the following:*

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

23 (2) *That he or she has made a good faith effort to determine if*  
24 *there are any asbestos trusts against which he or she has a basis*  
25 *to make a claim and, if there are, that he or she has made claims*  
26 *with all of those asbestos trusts.*

27 (i) *A plaintiff in an asbestos trust action, as defined in Section*  
28 *821, shall not be entitled to a trial preference if the plaintiff is*  
29 *subject to an order issued pursuant to Section 825.*

30 (j) (1) *A party to a civil action who is a veteran shall be entitled*  
31 *to preference ahead of all parties who are not veterans.*

32 (2) *For purposes of this section, "veteran" means any person*  
33 *who has served full time for 30 days or more in the armed forces*  
34 *in time of war or in time of peace in a campaign or expedition for*  
35 *service in which a medal has been authorized by the government*  
36 *of the United States, or during the period September 16, 1940, to*  
37 *January 31, 1955, inclusive, or who has served at least 181*  
38 *consecutive days since January 31, 1955, and who has been*  
39 *discharged or released under conditions other than dishonorable,*  
40 *but does not include any person who served only in auxiliary or*

1 *reserve components of the armed forces whose service therein did*  
2 *not exempt him or her from the operation of the federal Selective*  
3 *Training and Service Act of 1940 (54 Stat. 885, as amended).*

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

6

7 CHAPTER 6. ACTIONS RELATING TO ASBESTOS TORT CLAIMS

8

9 820. This chapter shall be known and may be cited as the  
10 Asbestos Tort Claim Trust Transparency Act.

11 821. The following terms are defined as follows:

12 (a) "Asbestos tort action" means any action involving an  
13 asbestos tort claim.

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

24 (c) "Asbestos trust" means a trust entity, qualified settlement  
25 fund, or claims processing facility established or in the process of  
26 being established pursuant to an administrative or legal action or  
27 a United States Bankruptcy court pursuant to Section 524(g) of  
28 Title 11, or Public Law 103-298 set out under Section 40101 of  
29 Title 49, of the United States Code, or other law formed for the  
30 purpose of compensating claimants asserting eligible asbestos tort  
31 claims.

32 (d) "Asbestos trust claim" means any asbestos tort claim filed  
33 or that could be filed with an asbestos trust.

34 (e) "Asbestos trust claim documents" means all writings, as  
35 defined by Section 250 of the Evidence Code, and information  
36 relevant to a pending or potential claim against an asbestos trust,  
37 including any communications between the plaintiff and an  
38 asbestos trust and all proof of claim forms and supplementary or  
39 supporting materials submitted to or required by an asbestos trust,  
40 including, without limitation, affidavits, declarations, interrogatory

1 responses, deposition and trial testimony, economic loss  
2 documentation, medical records, death certificates and certificates  
3 of official capacity.

4 (f) “Plaintiff” means a plaintiff in an asbestos tort action and  
5 any person acting on the plaintiff’s behalf, including the plaintiff’s  
6 attorney.

7 822. (a) (1) The plaintiff in an asbestos tort claim shall serve  
8 the following:

9 (A) A sworn statement identifying each asbestos trust claim,  
10 and for each asbestos trust claim, whether there has been a request  
11 to defer, delay, suspend, or toll the claim. The sworn statement  
12 shall also state the dollar amount that the plaintiff has requested  
13 and received for each asbestos trust claim.

14 (B) All asbestos trust claim documents.

15 (2) The documents described in paragraph (1) shall be served  
16 no later than 90 days after the filing of the complaint in an asbestos  
17 tort action, except under the following circumstances in which  
18 case the documents shall be served in the lesser time:

19 (A) Within 30 days, in an asbestos tort action in which the  
20 plaintiff is awarded a preferential trial date pursuant to Section 36.

21 (B) On or before March 1, 2018, with respect to an asbestos tort  
22 action that is currently pending on or before January 1, 2018.

23 (b) The plaintiff shall supplement the information and materials  
24 served pursuant to subdivision (a) within 30 days of filing any  
25 additional asbestos trust claims, supplementing an existing asbestos  
26 trust claim, or receiving additional information or materials related  
27 to any asbestos trust claim and, to the extent not earlier  
28 supplemented, no later than seven days before trial.

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

32 823. (a) A defendant in an asbestos tort action may seek  
33 discovery of relevant materials from any asbestos trust that  
34 concerns the plaintiff. The plaintiff may not claim privilege or  
35 confidentiality to bar discovery under this section and shall provide  
36 consent or other authorization as may be required by an asbestos  
37 trust to facilitate the release of relevant asbestos trust claim  
38 documents sought by the defendant.

39 (b) Asbestos trust claim documents shall be admissible as  
40 evidence in an asbestos tort action, including, without limitation,

1 to prove alternative causation for a plaintiff's injury or to prove  
2 that the fault or responsibility for a plaintiff's injury should be  
3 apportioned. Claims of privilege shall not apply to asbestos trust  
4 claim documents.

5 824. (a) If a defendant identifies an asbestos trust that a  
6 plaintiff failed to disclose as required by Section 822 as to which  
7 the defendant reasonably believes the plaintiff has a viable asbestos  
8 trust claim, the defendant may file a motion for an order for any  
9 of the following:

10 (1) To require the plaintiff to file a claim against all such  
11 asbestos trusts.

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

14 (3) Any other relief that the court deems appropriate in its  
15 discretion for good cause shown.

16 (b) Absent new evidence of exposure to other asbestos products  
17 or exposure to asbestos products at work sites or locations not  
18 previously disclosed by the plaintiff in discovery, a defendant shall  
19 only file one motion naming all the asbestos trusts against which  
20 the defendant reasonably believes the plaintiff has a viable asbestos  
21 trust claim that the plaintiff has not previously disclosed.

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

26 825. In an asbestos tort action, the court shall stay the action,  
27 decline to assign an initial trial date, deny a motion for preference  
28 under Section 36, vacate or continue the trial date, or impose any  
29 other remedies in its discretion, including, but not limited to,  
30 imposing sanctions pursuant to Sections 2023.010 and 2023.030,  
31 in any of the following circumstances:

32 (a) Identification by a plaintiff of an asbestos trust pursuant to  
33 Section 822 for which the plaintiff has a basis to file but has not  
34 yet filed an asbestos trust claim.

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

37 (c) Upon granting a defendant's motion pursuant to Section  
38 824.

1 826. No earlier than 60 days after, and no later than 120 days  
2 after, entry of judgment, the plaintiff in an asbestos tort action  
3 shall serve the following:

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

5 (1) Identification of each asbestos trust claim and, for each  
6 asbestos trust claim, whether there has been a request to defer,  
7 delay, suspend, or toll the claim.

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

10 (3) A statement that the plaintiff has filed all viable asbestos  
11 trust claims and no additional asbestos trust claims will be  
12 subsequently filed.

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

14 827. In an asbestos tort action in which damages are awarded,  
15 the claims against the other defendants shall be reduced, pursuant  
16 to Section 877, by the amount received by or on behalf of a plaintiff  
17 from an asbestos trust or, if not yet paid as of the date of entry of  
18 judgment, by the valuation amount of such asbestos trust claim as  
19 specified in the asbestos trust claim documents, and by the amounts  
20 paid by other defendants, as specified in Section 877.

21 828. (a) In an asbestos tort action, a court shall retain  
22 jurisdiction over the action for four years after entry of judgment  
23 to hear motions, order discovery, make determinations regarding  
24 reduction of claims pursuant to Section 877 for any sums received  
25 by a plaintiff from an asbestos trust claim or from other defendants,  
26 or to otherwise make determinations or enforce remedies regarding  
27 issues related to this chapter.

28 (b) This section does not limit or otherwise affect any rights or  
29 remedies otherwise available.

30 829. This chapter applies to all asbestos tort actions filed on  
31 or after the effective date of the act adding this chapter and all  
32 asbestos tort actions pending on the effective date of the act adding  
33 this chapter if the initial trial date in the asbestos tort action has  
34 not yet passed.

35 SEC. 3. Section 877 of the Code of Civil Procedure is amended  
36 to read:

37 877. Where a release, dismissal with or without prejudice, or  
38 a covenant not to sue or not to enforce judgment is given in good  
39 faith before verdict or judgment to one or more of a number of  
40 tortfeasors claimed to be liable for the same tort, or to one or more

1 other co-obligors mutually subject to contribution rights, it shall  
2 have the following effect:

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

8 (2) *This subdivision shall also apply to moneys received, or to*  
9 *be received, by or on behalf of a claimant from an asbestos trust,*  
10 *as defined by Section 821, whether the moneys are received before*  
11 *or after verdict or judgment.*

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

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

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

21 SEC. 4. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.