

REFERENCE TITLE: **personal injury action; asbestos; requirements**

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2603

Introduced by
Representatives Borrelli, Stevens: Campbell, Carter, Gray, Lovas,
Mitchell, Montenegro, Olson

AN ACT

**AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 19;
RELATING TO ASBESTOS RELATED PERSONAL INJURY ACTIONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 6, Arizona Revised Statutes, is amended
3 by adding article 19, to read:

4 ARTICLE 19. ASBESTOS EXPOSURE RELATED PERSONAL INJURY CLAIMS
5 12-782. Asbestos exposure related claims: disclosures:
6 discovery: mandatory claims: stay of proceedings:
7 assignment of rights and claims: remedies:
8 definitions

9 A. WITHIN FORTY-FIVE DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION OR
10 WITHIN FORTY-FIVE DAYS AFTER JOINDER OF ISSUES IN AN ACTION THAT IS SUBJECT
11 TO THIS SECTION, WHICHEVER IS LATER, THE PLAINTIFF SHALL PROVIDE TO ALL
12 PARTIES A SWORN STATEMENT IDENTIFYING EACH PERSONAL INJURY CLAIM THAT THE
13 PLAINTIFF HAS FILED OR REASONABLY ANTICIPATES FILING AGAINST AN ASBESTOS
14 TRUST. THE STATEMENT FOR EACH CLAIM SHALL INCLUDE THE NAME, ADDRESS AND
15 CONTACT INFORMATION FOR THE ASBESTOS TRUST, THE AMOUNT CLAIMED BY THE
16 PLAINTIFF, THE DATE THAT THE PLAINTIFF FILED THE CLAIM, THE DISPOSITION OF
17 THE CLAIM AND WHETHER THERE HAS BEEN A REQUEST TO DEFER, DELAY, SUSPEND OR
18 TOLL THE CLAIM AGAINST THE ASBESTOS TRUST.

19 B. WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION OR
20 WITHIN SIXTY DAYS AFTER JOINDER OF ISSUES IN AN ACTION THAT IS SUBJECT TO
21 THIS SECTION, WHICHEVER IS LATER, THE PLAINTIFF SHALL PROVIDE TO ALL PARTIES
22 ALL OF THE FOLLOWING:

23 1. FOR EACH PERSONAL INJURY CLAIM THAT THE PLAINTIFF HAS FILED AGAINST
24 AN ASBESTOS TRUST, A COPY OF THE FINAL EXECUTED PROOF OF CLAIM, ALL TRUST
25 DOCUMENTS, INCLUDING TRUST CLAIMS MATERIALS, TRUST GOVERNANCE DOCUMENTS, ANY
26 DOCUMENTS REFLECTING THE CURRENT STATUS OF THE CLAIM AND, IF THE CLAIM IS
27 SETTLED, ALL DOCUMENTS RELATING TO THE SETTLEMENT OF THE CLAIM.

28 2. A LIST OF EACH PERSONAL INJURY CLAIM THAT THE PLAINTIFF REASONABLY
29 ANTICIPATES FILING AGAINST AN ASBESTOS TRUST, INCLUDING THE NAME, ADDRESS,
30 AND CONTACT INFORMATION FOR THE ASBESTOS TRUST AND THE AMOUNT THAT THE
31 PLAINTIFF ANTICIPATES CLAIMING AGAINST THE ASBESTOS TRUST.

32 C. THE PLAINTIFF SHALL SUPPLEMENT THE INFORMATION AND MATERIALS THAT
33 ARE PROVIDED UNDER SUBSECTIONS A AND B OF THIS SECTION WITHIN THIRTY DAYS
34 AFTER THE PLAINTIFF FILES AN ADDITIONAL CLAIM OR RECEIVES ADDITIONAL
35 INFORMATION OR DOCUMENTS RELATED TO ANY CLAIM THAT THE PLAINTIFF MAKES
36 AGAINST AN ASBESTOS TRUST.

37 D. TRUST CLAIMS MATERIALS AND TRUST GOVERNANCE DOCUMENTS ARE
38 ADMISSIBLE IN EVIDENCE. CLAIMS OF PRIVILEGE DO NOT APPLY TO TRUST CLAIMS
39 MATERIALS OR TRUST GOVERNANCE DOCUMENTS.

40 E. A DEFENDANT IN A PERSONAL INJURY CLAIM MAY SEEK DISCOVERY AGAINST
41 AN ASBESTOS TRUST IDENTIFIED UNDER SUBSECTIONS A, B, C, F, G, H, I AND J OF
42 THIS SECTION. THE PLAINTIFF MAY NOT CLAIM PRIVILEGE OR CONFIDENTIALITY TO
43 BAR DISCOVERY AND THE PLAINTIFF SHALL PROVIDE CONSENTS OR OTHER EXPRESSION OF
44 PERMISSION THAT MAY BE REQUIRED BY THE ASBESTOS TRUST TO RELEASE INFORMATION
45 AND MATERIALS SOUGHT BY THE DEFENDANT.

1 F. IF ANY DEFENDANT IDENTIFIES AN ASBESTOS TRUST NOT NAMED BY THE
2 PLAINTIFF AGAINST WHICH THE DEFENDANT REASONABLY BELIEVES THE PLAINTIFF
3 SHOULD FILE A CLAIM, ON MOTION BY THE DEFENDANT, THE COURT SHALL DETERMINE
4 WHETHER TO ORDER THE PLAINTIFF TO FILE A CLAIM AGAINST THE ASBESTOS TRUST.
5 THE DEFENDANT SHALL PROVIDE ALL DOCUMENTATION IT POSSESSES OR IS AWARE OF IN
6 SUPPORT OF THE MOTION.

7 G. THE COURT SHALL ESTABLISH A DEADLINE FOR FILING A MOTION UNDER
8 SUBSECTION F OF THIS SECTION. ANY DEADLINE THAT IS ESTABLISHED PURSUANT TO
9 THIS SUBSECTION MUST AFFORD THE PARTIES AN ADEQUATE OPPORTUNITY TO
10 INVESTIGATE THE DEFENDANT'S CLAIMS.

11 H. IF THE COURT ORDERS THE PLAINTIFF TO FILE A CLAIM WITH THE ASBESTOS
12 TRUST, THE COURT SHALL STAY THE IMMEDIATE ACTION UNTIL THE PLAINTIFF SWEARS
13 OR AFFIRMS THAT THE PLAINTIFF HAS FILED THE CLAIM AGAINST THE ASBESTOS TRUST
14 AND THE PLAINTIFF PROVIDES TO THE COURT AND TO ALL PARTIES A FINAL EXECUTED
15 PROOF OF CLAIM AND ALL OTHER TRUST CLAIMS MATERIALS RELEVANT TO EACH CLAIM
16 THE PLAINTIFF HAS AGAINST AN ASBESTOS TRUST.

17 I. THE COURT MAY ALLOW ADDITIONAL TIME FOR DISCOVERY OR MAY STAY THE
18 PROCEEDINGS FOR OTHER GOOD CAUSE SHOWN.

19 J. NOT LESS THAN THIRTY DAYS BEFORE TRIAL, THE COURT SHALL ENTER INTO
20 THE RECORD A TRUST CLAIMS DOCUMENT THAT IDENTIFIES EACH PERSONAL INJURY CLAIM
21 THE PLAINTIFF HAS MADE AGAINST AN ASBESTOS TRUST.

22 K. TRUST CLAIMS MATERIALS THAT ARE SUFFICIENT TO ENTITLE A CLAIM TO
23 CONSIDERATION FOR PAYMENT UNDER THE APPLICABLE TRUST GOVERNANCE DOCUMENTS MAY
24 BE SUFFICIENT TO SUPPORT A JURY FINDING THAT THE PLAINTIFF MAY HAVE BEEN
25 EXPOSED TO PRODUCTS FOR WHICH THE TRUST WAS ESTABLISHED TO PROVIDE
26 COMPENSATION AND THAT THE EXPOSURE MAY BE A SUBSTANTIAL FACTOR IN CAUSING THE
27 PLAINTIFF'S INJURY THAT IS AT ISSUE IN THE ACTION.

28 L. A PLAINTIFF WHO FAILS TO TIMELY PROVIDE ALL OF THE INFORMATION
29 REQUIRED UNDER SUBSECTIONS A, B, C, F, G, H, I AND J OF THIS SECTION IS
30 SUBJECT TO SECTIONS 12-349 AND 12-3201 AND ANY OTHER SANCTION THAT THE COURT
31 ORDERS.

32 M. FOR THE PURPOSES OF THIS SECTION:

33 1. "ASBESTOS TRUST" MEANS A TRUST, QUALIFIED SETTLEMENT FUND,
34 COMPENSATION FUND OR CLAIMS FACILITY THAT IS CREATED AS A RESULT OF AN
35 ADMINISTRATIVE OR LEGAL ACTION, BANKRUPTCY, AGREEMENT OR OTHER SETTLEMENT OR
36 PURSUANT TO 11 UNITED STATES CODE SECTION 524(g) AND THAT IS INTENDED TO
37 PROVIDE COMPENSATION TO CLAIMANTS ALLEGING PERSONAL INJURY CLAIMS AS A RESULT
38 OF HARM, ALSO POTENTIALLY COMPENSABLE IN THE IMMEDIATE ACTION, FOR WHICH THE
39 ENTITY CREATING THE TRUST, QUALIFIED SETTLEMENT FUND, COMPENSATION FUND OR
40 CLAIMS FACILITY IS ALLEGED TO BE RESPONSIBLE.

41 2. "PERSONAL INJURY CLAIM" MEANS ANY CLAIM FOR DAMAGES, LOSS,
42 INDEMNIFICATION, CONTRIBUTION, RESTITUTION OR OTHER RELIEF, INCLUDING
43 PUNITIVE DAMAGES, THAT IS RELATED TO BODILY INJURY OR ANOTHER HARM, INCLUDING
44 LOSS OF CONSORTIUM, SOCIETY OR COMPANIONSHIP, LOSS OF SUPPORT, PERSONAL
45 INJURY OR DEATH, MENTAL OR EMOTIONAL INJURY, RISK OR FEAR OF DISEASE OR OTHER

1 INJURY OR COSTS OF MEDICAL MONITORING OR SURVEILLANCE AND THAT IS ALLEGEDLY
2 CAUSED BY OR RELATED TO THE CLAIMANT'S EXPOSURE TO ASBESTOS, AND INCLUDES A
3 CLAIM MADE BY OR ON BEHALF OF THE PERSON WHO CLAIMS THE INJURY OR HARM OR BY
4 OR ON BEHALF OF THE PERSON'S REPRESENTATIVE, SPOUSE, PARENT, MINOR CHILD OR
5 OTHER RELATIVE. PERSONAL INJURY CLAIM DOES NOT INCLUDE A CLAIM FOR
6 COMPENSATORY BENEFITS PURSUANT TO WORKER'S COMPENSATION OR VETERANS BENEFITS.

7 3. "TRUST CLAIMS MATERIALS" MEANS ALL DOCUMENTS AND INFORMATION
8 RELEVANT OR RELATED TO A PENDING OR POTENTIAL CLAIM AGAINST AN ASBESTOS TRUST
9 AND INCLUDES CLAIMS FORMS AND SUPPLEMENTARY MATERIALS, PROOFS OF CLAIM,
10 AFFIDAVITS, DEPOSITIONS AND TRIAL TESTIMONY, WORK HISTORY AND MEDICAL AND
11 HEALTH RECORDS.

12 4. "TRUST GOVERNANCE DOCUMENT" MEANS ANY DOCUMENT THAT DETERMINES
13 ELIGIBILITY AND PAYMENT LEVELS, INCLUDING CLAIMS PAYMENT MATRICES, TRUST
14 DISTRIBUTION PROCEDURES OR PLANS FOR REORGANIZATION, FOR AN ASBESTOS TRUST.

15 Sec. 2. Applicability

16 This act applies to actions filed on or after the effective date of
17 this act.