House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

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

CHAPTER 246

HOUSE BILL 2603

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)

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

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

ARTICLE 19. ASBESTOS EXPOSURE RELATED PERSONAL INJURY CLAIMS

12-782. Asbestos exposure related claims; disclosures; discovery; mandatory claims; stay of proceedings; assignment of rights and claims; remedies; definitions

A. IN ANY ACTION INVOLVING A PERSONAL INJURY CLAIM, WITHIN FORTY-FIVE DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION FOR PENDING PERSONAL INJURY CLAIMS IN WHICH THE DEFENDANT'S ANSWER HAS BEEN FILED OR WITHIN FORTY-FIVE DAYS AFTER THE FILING OF THE DEFENDANT'S ANSWER IN A LAWSUIT INVOLVING A PERSONAL INJURY CLAIM, WHICHEVER IS LATER, THE PLAINTIFF SHALL PROVIDE TO ALL PARTIES A SWORN STATEMENT IDENTIFYING EACH PERSONAL INJURY CLAIM THAT THE PLAINTIFF 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.

B. IN ANY ACTION INVOLVING A PERSONAL INJURY CLAIM, WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION FOR PENDING PERSONAL INJURY CLAIMS IN WHICH THE DEFENDANT'S ANSWER HAS BEEN FILED OR WITHIN SIXTY DAYS AFTER THE FILING OF THE DEFENDANT'S ANSWER IN A LAWSUIT INVOLVING A PERSONAL INJURY CLAIM, WHICHEVER IS LATER, THE PLAINTIFF SHALL PROVIDE TO ALL PARTIES ALL OF THE FOLLOWING:

1. FOR EACH PERSONAL INJURY CLAIM THAT THE PLAINTIFF 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 THAT THE PLAINTIFF REASONABLY ANTICIPATES FILING AGAINST AN ASBESTOS TRUST, INCLUDING THE NAME, ADDRESS, AND CONTACT INFORMATION FOR THE ASBESTOS TRUST AND THE AMOUNT THAT THE PLAINTIFF ANTICIPATES CLAIMING AGAINST THE ASBESTOS TRUST.

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

D. IF THE PLAINTIFF IDENTIFIES ANY ASBESTOS TRUSTS PURSUANT TO SUBSECTION B, PARAGRAPH 2 OF THIS SECTION, THE COURT SHALL STAY ALL PROCEEDINGS UNTIL THE PLAINTIFF FILES A CLAIM AGAINST THE ASBESTOS TRUST AND PROVIDES TO THE COURT AND TO ALL PARTIES IN THE PERSONAL INJURY ACTION A COPY OF THE FINAL EXECUTED PROOF OF CLAIM AND ALL OTHER TRUST CLAIMS MATERIALS

RELEVANT TO EACH CLAIM THE PLAINTIFF HAS AGAINST EACH ASBESTOS TRUST IDENTIFIED PURSUANT TO SUBSECTION B, PARAGRAPH 2 OF THIS SECTION. THE PLAINTIFF SHALL DISCLOSE WHETHER THERE HAS BEEN A REQUEST TO DEFER, DELAY, SUSPEND OR TOLL THE CLAIM AGAINST ANY ASBESTOS TRUST.

E. TO THE EXTENT PERMITTED BY COURT RULE, IN A PERSONAL INJURY CLAIM ACTION, TRUST CLAIMS MATERIALS AND TRUST GOVERNANCE DOCUMENTS ARE ADMISSIBLE IN EVIDENCE. CLAIMS OF PRIVILEGE DO NOT APPLY TO TRUST CLAIMS MATERIALS OR TRUST GOVERNANCE DOCUMENTS.

F. A DEFENDANT IN A PERSONAL INJURY CLAIM MAY SEEK DISCOVERY AGAINST AN ASBESTOS TRUST IDENTIFIED UNDER SUBSECTIONS A, B, C, H, I, J, K AND L OF THIS SECTION. 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.

G. A COURT MAY NOT SCHEDULE A TRIAL IN A PERSONAL INJURY CLAIM ACTION UNTIL AT LEAST ONE HUNDRED EIGHTY DAYS AFTER THE PLAINTIFF MAKES THE DISCLOSURES REQUIRED BY SUBSECTIONS A, B AND C OF THIS SECTION.

H. IF ANY DEFENDANT IDENTIFIES AN ASBESTOS TRUST NOT NAMED BY THE PLAINTIFF AGAINST WHICH THE DEFENDANT REASONABLY BELIEVES THE PLAINTIFF SHOULD FILE A CLAIM, ON MOTION BY THE DEFENDANT, THE COURT SHALL DETERMINE WHETHER TO ORDER THE PLAINTIFF TO FILE A CLAIM AGAINST THE ASBESTOS TRUST. FOR EACH ASBESTOS TRUST A DEFENDANT IDENTIFIES, THE DEFENDANT SHALL PRODUCE OR DESCRIBE THE EVIDENCE REQUIRED TO FILE A VALID CLAIM WITH THE ASBESTOS TRUST AND THE AMOUNT OF MONEY THE ASBESTOS TRUST SHOULD PAY FOR THE PLAINTIFF'S CLAIM.

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

J. 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 THE PLAINTIFF 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.

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

L. NOT LESS THAN THIRTY DAYS BEFORE TRIAL, THE COURT SHALL DIRECT THE PARTIES TO ENTER INTO THE RECORD A TRUST CLAIMS DOCUMENT THAT IDENTIFIES EACH PERSONAL INJURY CLAIM THE PLAINTIFF HAS MADE AGAINST AN ASBESTOS TRUST.

M. A PLAINTIFF'S SUBMISSION OF A CLAIM TO AN ASBESTOS TRUST AND RELATED TRUST CLAIMS MATERIALS MAY BE CONSIDERED BY A JURY OR OTHER TRIER OF FACT TO DETERMINE LIABILITY AND APPORTION FAULT IN A PERSONAL INJURY CLAIM AND SHALL BE SUFFICIENT TO SUPPORT A JURY FINDING THAT THE PLAINTIFF HAS BEEN EXPOSED TO PRODUCTS FOR WHICH THE ASBESTOS TRUST WAS ESTABLISHED TO PROVIDE

COMPENSATION AND THAT THE EXPOSURE MAY BE A SUBSTANTIAL FACTOR IN CAUSING THE PLAINTIFF'S INJURY THAT IS AT ISSUE IN THE PERSONAL INJURY CLAIM. IF A PLAINTIFF IN A PERSONAL INJURY CLAIM PROCEEDS TO TRIAL BEFORE ONE OR MORE OF THE CLAIMS AGAINST AN ASBESTOS TRUST IS RESOLVED AND SUBSEQUENTLY RECEIVES COMPENSATION FROM AN ASBESTOS TRUST, THE AMOUNT OF THE COMPENSATION SHALL BE CREDITED AGAINST ANY JUDGMENT ENTERED AGAINST ANY DEFENDANT FOUND TO BE AT FAULT IN THE ACTION TO THE EXTENT THAT THE COMPENSATION AMOUNT EXCEEDS THE FAULT APPORTIONED TO THE ASBESTOS TRUST BY THE JURY OR OTHER FACT FINDER. IF MULTIPLE DEFENDANTS ARE FOUND LIABLE FOR DAMAGES, THE COURT SHALL DISTRIBUTE THE AMOUNT OF THE SETOFF OR CREDIT PROPORTIONALLY ACCORDING TO THE LIABILITY OF EACH DEFENDANT.

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

O. NOTHING IN THIS SECTION REQUIRES DISCLOSURE OF INFORMATION OR DOCUMENTS THAT EITHER:

1. IS THE SUBJECT OF A BINDING CONTRACTUAL CONFIDENTIALITY CLAUSE IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

2. IS RESTRICTED FROM DISCLOSURE BY FEDERAL LAW OR COURT ORDER.

P. FOR THE PURPOSES OF THIS SECTION:

1. "ASBESTOS TRUST" MEANS A TRUST, QUALIFIED SETTLEMENT FUND, COMPENSATION FUND OR CLAIMS FACILITY THAT IS CREATED AS A RESULT OF AN ADMINISTRATIVE OR LEGAL ACTION, BANKRUPTCY, AGREEMENT OR OTHER SETTLEMENT OR PURSUANT TO 11 UNITED STATES CODE SECTION 524(g) AND 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.

2. "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, AND 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 FOR COMPENSATORY BENEFITS PURSUANT TO WORKER'S COMPENSATION OR VETERANS BENEFITS.

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

4. "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.

Sec. 2. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 3. Legislative intent

It is the intent of the legislature in enacting this act to allow claimants to exercise their rights to recovery in personal injury actions involving exposure to asbestos and materials containing asbestos while simultaneously prohibiting claimants from obtaining duplicative or excessive recovery by obtaining monetary damages from lawsuits filed in Arizona courts and also filing claims with national trust funds established to compensate individuals for damages resulting from exposure to asbestos and materials containing asbestos. To that end, this act is intended to permit defendants in both pending and future personal injury actions seeking monetary damages for claims resulting from exposure to asbestos and materials containing asbestos to present evidence, and for the jury in such actions to consider evidence, that a third party is partially or wholly liable for the plaintiff's alleged damages and that the plaintiff has received or may receive an award of monetary damages from a collateral source that should be taken into consideration when determining the amount of monetary damages that should be awarded to the plaintiff in the personal injury action.

Sec. 4. Retroactivity

This act applies retroactivity to actions involving personal injury claims, as defined in section 12-782, Arizona Revised Statutes, that are pending or filed on or after the effective date of this act.

APPROVED BY THE GOVERNOR APRIL 9, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2015.

Passed the House March 10, 2015

by the following vote: 36 Ayes,

23 Nays, 1 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate March 31, 2015

by the following vote: 17 Ayes,

12 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1st day of April, 2015

at 11:19 o'clock A. M.

Secretary to the Governor

Approved this 9th day of

April

at 11:59 o'clock A M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 10th day of April, 2015

at 8:10 o'clock A. M.

Secretary of State

H.B. 2603