

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB404 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: Fred Jordan

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

PROPOSED  
COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 404

By: Jolley of the Senate

and

Jordan of the House

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to personal injury trusts; creating the Personal Injury Trust Fund Transparency Act; providing short title; defining terms; requiring plaintiff in personal injury or tort actions to disclose certain information; establishing certain presumption; prohibiting certain claims of privilege; authorizing certain discovery; prohibiting scheduling of personal injury trial within specified time period; requiring stay under certain circumstances; authorizing certain motion by defendant; establishing procedures upon identification of certain trust; requiring court to make certain determination; requiring court to order filing of claim under certain circumstances; requiring certain documents to be entered into record within specified time period; establishing rebuttable presumption; requiring certain valuation; authorizing certain credits; providing for sanctions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1       SECTION 1.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 81 of Title 76, unless there is  
3 created a duplication in numbering, to read as follows:

4       This act shall be known and may be cited as the "Personal Injury  
5 Trust Fund Transparency Act".

6       SECTION 2.       NEW LAW       A new section of law to be codified  
7 in the Oklahoma Statutes as Section 82 of Title 76, unless there is  
8 created a duplication in numbering, to read as follows:

9       As used in the Personal Injury Trust Fund Transparency Act:

10      1. "Personal injury claim" means any claim for damages, loss,  
11 indemnification, contribution, restitution or other relief,  
12 including punitive damages, that is related to bodily injury or  
13 another harm, including loss of consortium, society, or  
14 companionship, loss of support, personal injury or death, mental or  
15 emotional injury, risk or fear of disease or other injury, or costs  
16 of medical monitoring or surveillance. "Personal injury claim"  
17 includes a claim made by or on behalf of the person who claims the  
18 injury or harm or by or on behalf of the person's representative,  
19 spouse, parent, minor child, or other relative. "Personal injury  
20 claim" does not include a claim for compensatory benefits pursuant  
21 to crime victim's compensation, workers' compensation or veteran's  
22 benefits;

23      2. "Personal injury trust" means a government-approved or  
24 court-approved trust, qualified settlement fund, compensation fund

1 or claims facility created as a result of a federal or state  
2 administrative or legal action, a court-approved bankruptcy, or  
3 pursuant to 11 USC 524 (g) or 49 USC 40101, that is intended to  
4 provide compensation to claimants alleging personal injury claims as  
5 a result of harm, also potentially compensable in the immediate tort  
6 action, for which the entity creating the trust, compensation fund,  
7 or claims facility is alleged to be responsible;

8 3. "Trust claims materials" means all documents and information  
9 relevant or related to a pending or potential claim against a  
10 personal injury trust. "Trust claims materials" include, but are  
11 not limited to, claims forms and supplementary materials,  
12 affidavits, depositions and trial testimony, work history, and  
13 medical and health records; and

14 4. "Trust governance document" means any document that  
15 determines eligibility and payment levels, including claims payment  
16 matrices, trust distribution procedures, or plans for  
17 reorganization, for a personal injury trust.

18 SECTION 3. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 83 of Title 76, unless there is  
20 created a duplication in numbering, to read as follows:

21 REQUIRED DISCLOSURES BY PLAINTIFF.

22 A. Within ninety (90) days after an action for a personal  
23 injury or other tort is filed, the plaintiff, without awaiting a  
24 discovery request, shall provide to all parties a statement

1 identifying all personal injury claims the plaintiff has or  
2 anticipates filing against a personal injury trust, and for each  
3 claim, whether there has been a request to defer, delay, suspend or  
4 toll the claim against the personal injury trust. The statement  
5 shall include an attestation that the plaintiff swears or affirms,  
6 under penalties of perjury, that the statement is complete and is  
7 based on the plaintiff's and plaintiff's attorney's good-faith  
8 investigation of all potential claims against personal injury  
9 trusts.

10 B. The plaintiff shall produce to all parties, for each  
11 personal injury claim he or she filed against a personal injury  
12 trust identified in subsection A of this section, a final executed  
13 proof of claim and all other trust claims materials relevant to each  
14 claim.

15 C. The plaintiff shall supplement the information and materials  
16 he or she provided under this section within thirty (30) days after  
17 the plaintiff files an additional claim, supplements an existing  
18 claim or receives additional information or materials.

19 SECTION 4. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 84 of Title 76, unless there is  
21 created a duplication in numbering, to read as follows:

22 DISCOVERY; USE OF MATERIALS.

23 A. Trust claims materials and trust governance documents shall  
24 be presumed to be relevant and authentic, subject to the Rules of

1 Evidence governing admissibility. Any party may present trust  
2 claims materials to prove alternative causation for a plaintiff's  
3 injuries or to allocate liability for the plaintiff's injury. No  
4 claims of privilege may apply to trust claims materials or trust  
5 governance documents.

6 B. A defendant in a personal injury claim may seek discovery  
7 against a personal injury trust identified under Section 3 of this  
8 act. The plaintiff may not claim privilege or confidentiality to  
9 bar discovery under this subsection and shall provide consent or  
10 other expression of permission that may be required by the personal  
11 injury trust to release information and materials sought by the  
12 defendant.

13 SECTION 5. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 85 of Title 76, unless there is  
15 created a duplication in numbering, to read as follows:

16 SCHEDULING TRIAL; STAY OF ACTION.

17 A. The trial date in a personal injury action in this state  
18 shall be no earlier than one hundred eighty (180) days after the  
19 plaintiff makes the disclosures required under subsections A and B  
20 of Section 3 of this act.

21 B. If a plaintiff states under Section 3 of this act that he or  
22 she anticipates a claim against a personal injury trust, all  
23 proceedings shall be stayed until the plaintiff files such trust  
24 claims and provides to all parties a final executed proof of claim

1 and all other trust claims materials relevant to each claim. The  
2 plaintiff shall also state whether there has been a request to  
3 defer, delay, suspend, or toll the claim against the personal injury  
4 trust.

5 SECTION 6. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 86 of Title 76, unless there is  
7 created a duplication in numbering, to read as follows:

8 DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE  
9 PERSONAL INJURY TRUSTS.

10 A. 1. Not later than ninety (90) days before trial, any  
11 defendant may move the court for an order under subsection D of this  
12 section by identifying a personal injury trust against which the  
13 defendant in good faith believes the plaintiff can file a successful  
14 claim. For each personal injury trust a defendant identifies, the  
15 defendant shall produce or describe the evidence sufficient to meet  
16 the personal injury trust distribution procedure requirements to  
17 file a valid claim and the amount of money the trust should pay for  
18 the claim.

19 2. Notwithstanding any other provision of this subsection, if  
20 the plaintiff produces additional information that supports the  
21 filing of an additional personal injury trust claim, a defendant may  
22 file a motion to stay the proceedings within seven (7) days of  
23 receiving the additional information.

1 B. Within ten (10) days of receiving a motion under subsection  
2 A of this section, the plaintiff shall, for each personal injury  
3 trust identified by the defendant:

4 1. File a claim with the personal injury trust;

5 2. File a written response with the court that sets forth  
6 reasons why there is insufficient evidence to permit the plaintiff  
7 to file a claim in good faith under the personal injury trust  
8 distribution procedure identified by the defendant; or

9 3. File a written response with the court requesting a  
10 determination that the plaintiff's or attorney's fees and expenses  
11 to prepare and file the personal injury trust claim identified in  
12 the defendant's motion exceed the plaintiff's reasonably anticipated  
13 recovery from the personal injury trust.

14 C. If the defendant has met its burden under subsection A of  
15 this section, and if the plaintiff files a response pursuant to  
16 paragraph 2 of subsection B of this section, the court shall  
17 determine, for each personal injury trust identified under  
18 subsection A of this section, whether there is a good-faith basis  
19 for the plaintiff to file a claim with the personal injury trust or  
20 if the plaintiff does not meet criteria set forth in the personal  
21 injury trust's trust governance documents.

22 D. If the defendant has met its burden under subsection A of  
23 this section and if the plaintiff files a response pursuant to  
24 paragraph 3 of subsection B of this section, the court shall



1 determine if the plaintiff's or attorney's fees and expenses to  
2 prepare and file the personal injury trust claim identified in the  
3 defendant's motion, exceed the plaintiff's reasonably anticipated  
4 recovery from the personal injury trust.

5 E. If the court determines that there is a good-faith basis for  
6 the plaintiff to file a claim against a personal injury trust  
7 identified by a defendant, the court shall:

8 1. Order the plaintiff to file a claim with the personal injury  
9 trust and stay the immediate action until the plaintiff swears or  
10 affirms that he or she has filed the claim against the personal  
11 injury trust and the plaintiff provides to all parties a final  
12 executed proof of claim and all other trust claims materials  
13 relevant to each claim the plaintiff has against a personal injury  
14 trust; or

15 2. If the court determines, pursuant to subsection D of this  
16 section, that the plaintiff's or attorney's fees and expenses exceed  
17 the plaintiff's reasonably anticipated recovery from the personal  
18 injury trust, the court shall stay the immediate action until the  
19 plaintiff files with the court and produces to all parties a  
20 verified statement of the plaintiff's history of exposure, usage, or  
21 other connection, as relevant, to the products, services, or events  
22 covered by the personal injury trust.

1 F. Not less than thirty (30) days after the plaintiff provides  
2 the documentation required under subsection D of this section, the  
3 court may schedule the plaintiff's action for trial.

4 G. Not less than thirty (30) days prior to trial, the court  
5 shall enter into the record a trust claims document that identifies  
6 each personal injury claim the plaintiff has made against a personal  
7 injury trust.

8 SECTION 7. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 87 of Title 76, unless there is  
10 created a duplication in numbering, to read as follows:

11 VALUATION OF PERSONAL INJURY TRUST CLAIMS; JUDICIAL NOTICE.

12 If a plaintiff proceeds to trial under this section before one  
13 of more of his or her personal injury trust claims is resolved,  
14 there is a rebuttable presumption that the plaintiff is entitled to,  
15 and will receive, the liquidated value specified in the trust  
16 governance document applicable to his or her claim at the time of  
17 trial. The court may take judicial notice that the trust governance  
18 document specifies compensation amounts and payment percentages and  
19 shall establish an attributed value to the plaintiff's personal  
20 injury trust claim.

21 SECTION 8. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 88 of Title 76, unless there is  
23 created a duplication in numbering, to read as follows:

24 SETOFFS; CREDIT.

1 In any personal injury claim for which damages are awarded, a  
2 defendant is entitled to a setoff or credit in the amount of the  
3 valuation established under Section 7 of this act and any amount the  
4 plaintiff has been awarded from a personal injury trust claim  
5 identified in subsection F of Section 6 of this act. If multiple  
6 defendants are found liable for damages, the court shall distribute  
7 the amount of setoff or credit proportionally, according to the  
8 liability of each defendant.

9 SECTION 9. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 89 of Title 76, unless there is  
11 created a duplication in numbering, to read as follows:

12 FAILURE TO PROVIDE INFORMATION; SANCTIONS.

13 A plaintiff who fails to provide all of the information required  
14 under Section 3, subsection B of Section 4 or subsection D of  
15 Section 6 of this act is subject to sanctions as provided in  
16 Sections 2011 and 3237 of Title 12 of the Oklahoma Statutes.

17 SECTION 10. This act shall become effective November 1, 2013.  
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