

An Act

ENROLLED SENATE
BILL NO. 404

By: Jolley of the Senate

and

Jordan and McCullough of
the House

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.

SUBJECT: Personal injury trusts

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

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

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

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

As used in the Personal Injury Trust Fund Transparency Act:

1. "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. "Personal injury claim" 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 crime victim's compensation, workers' compensation or veteran's benefits;

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

3. "Trust claims materials" means all documents and information relevant or related to a pending or potential claim against a personal injury trust. "Trust claims materials" include, but are not limited to, claims forms and supplementary materials,

affidavits, depositions and trial testimony, work history, and medical and health records; and

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 a personal injury trust.

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

REQUIRED DISCLOSURES BY PLAINTIFF.

A. Within ninety (90) days after an action for a personal injury or other tort is filed, the plaintiff, without awaiting a discovery request, shall provide to all parties a statement identifying all personal injury claims the plaintiff has or anticipates filing against a personal injury trust, and for each claim, whether there has been a request to defer, delay, suspend or toll the claim against the personal injury trust. The statement shall include an attestation that the plaintiff swears or affirms, under penalties of perjury, that the statement is complete and is based on the plaintiff's and plaintiff's attorney's good-faith investigation of all potential claims against personal injury trusts.

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

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

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

DISCOVERY; USE OF MATERIALS.

A. Trust claims materials and trust governance documents shall be presumed to be relevant and authentic, subject to the Rules of Evidence governing admissibility. Any party may present trust claims materials to prove alternative causation for a plaintiff's injuries or to allocate liability for the plaintiff's injury. No claims of privilege may apply to trust claims materials or trust governance documents.

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

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

SCHEDULING TRIAL; STAY OF ACTION.

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

B. If a plaintiff states under Section 3 of this act that he or she anticipates a claim against a personal injury trust, all proceedings shall be stayed until the plaintiff files such trust claims and provides to all parties a final executed proof of claim and all other trust claims materials relevant to each claim. The plaintiff shall also state whether there has been a request to defer, delay, suspend, or toll the claim against the personal injury trust.

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

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

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

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

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

1. File a claim with the personal injury trust;

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

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

C. If the defendant has met its burden under subsection A of this section, and if the plaintiff files a response pursuant to paragraph 2 of subsection B of this section, the court shall determine, for each personal injury trust identified under subsection A of this section, whether there is a good-faith basis for the plaintiff to file a claim with the personal injury trust or

if the plaintiff does not meet criteria set forth in the personal injury trust's trust governance documents.

D. If the defendant has met its burden under subsection A of this section and if the plaintiff files a response pursuant to paragraph 3 of subsection B of this section, the court shall determine if the plaintiff's or attorney's fees and expenses to prepare and file the personal injury trust claim identified in the defendant's motion, exceed the plaintiff's reasonably anticipated recovery from the personal injury trust.

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

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

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

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

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

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

VALUATION OF PERSONAL INJURY TRUST CLAIMS; JUDICIAL NOTICE.

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

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

SETOFFS; CREDIT.

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

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

FAILURE TO PROVIDE INFORMATION; SANCTIONS.

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

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

Passed the Senate the 30th day of April, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of April, 2013.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____