

# ASSEMBLY, No. 3848

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 2, 2016

**Sponsored by:**

**Assemblywoman HOLLY SCHEPISI**

**District 39 (Bergen and Passaic)**

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**District 37 (Bergen)**

**SYNOPSIS**

“Personal Injury Trust Fund Transparency Act;” requires plaintiff to file personal injury trust claims under certain circumstances; addresses allocation of trust claims; establishes scheduling and discovery requirements for certain tort actions.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning certain tort actions and supplementing Title 2A  
2 of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. This act shall be known and may be cited as the “Personal  
8 Injury Trust Fund Transparency Act.”

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10 2. As used in this act:

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

23 “Personal injury trust” means a government-approved or court-  
24 approved trust, qualified settlement fund, compensation fund or  
25 claims facility created as a result of an administrative or legal  
26 action, a court-approved bankruptcy, or pursuant to 11 U.S.C.  
27 s.524(g), 11 U.S.C. s.1121(A), or another applicable provision of  
28 law, that is intended to provide compensation to claimants alleging  
29 personal injury claims as a result of harm, also potentially  
30 compensable in a personal injury or tort action, for which the entity  
31 creating the trust, compensation fund, or claims facility is alleged to  
32 be responsible.

33 “Trust claims materials” means a final executed proof of claim  
34 against a personal injury trust and all other documents and  
35 information relevant or related to a resolved, pending or potential  
36 claim against a personal injury trust. Trust claims materials include,  
37 but are not limited to, claims forms and supplementary materials,  
38 affidavits, depositions and trial testimony, work history, medical  
39 and health records, all documents that reflect the status of the claim,  
40 and all documents that relate to the settlement of the claim if the  
41 claim has settled.

42 “Trust governance document” means all documents that relate to  
43 eligibility and payment levels, including claims payment matrices,  
44 trust distribution procedures, or plans for reorganization, for a  
45 personal injury trust.

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47 3. a. Within 30 days after an action for a personal injury or  
48 other tort is filed in a court of this State relating to any condition or

1 a substantially similar condition that is eligible for payment from a  
2 personal injury trust, or within 30 days after the effective date of  
3 this act, whichever is later, and before any evidence is preserved by  
4 deposition in the personal injury or other tort action, the plaintiff  
5 shall do all of the following:

6 (1) Provide the court and parties with a sworn statement signed  
7 by the plaintiff and the plaintiff's counsel, under penalties of  
8 perjury, indicating that an investigation of all personal injury trust  
9 claims has been conducted and that all personal injury trust claims  
10 that can be made by the plaintiff or any person on the plaintiff's  
11 behalf have been filed. The sworn statement shall indicate whether  
12 there has been a request to defer, delay, suspend, or toll any  
13 personal injury trust claim, and provide the disposition of each  
14 personal injury trust claim.

15 (2) Provide all parties with all trust claims materials, including  
16 trust claims materials that relate to conditions other than those that  
17 are the basis for the personal injury or tort action and including all  
18 trust claims materials from all law firms connected to the plaintiff,  
19 including anyone at a law firm involved in the personal injury or  
20 tort action, any referring law firm, and any other firm that has filed  
21 a personal injury trust claim for the plaintiff or on the plaintiff's  
22 behalf.

23 (3) If the plaintiff's personal injury trust claim is based on an  
24 exposure through another individual, the plaintiff shall produce all  
25 trust claims materials submitted by the other individual to any  
26 personal injury trusts if the materials are available.

27 (4) Supplement the information and materials required under  
28 this section within 30 days after the plaintiff or a person on the  
29 plaintiff's behalf supplements an existing personal injury trust  
30 claim, receives additional information or materials related to a  
31 personal injury trust claim, or files an additional personal injury  
32 trust claim.

33 b. The court may dismiss the personal injury or other tort  
34 action if the plaintiff fails to comply with this section.

35 c. A personal injury or other tort action may not proceed to  
36 trial until not less than 180 days after the requirements of  
37 subsection a. of this section are met.

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39 4. a. A defendant may file a motion requesting a stay of the  
40 proceedings on or before the later of the 60th day before the date on  
41 which the trial in the action is set to commence or the 15th day after  
42 the defendant first obtains information that could support additional  
43 trust claims by the plaintiff. The motion shall identify the additional  
44 personal injury trust claims the defendant believes the plaintiff can  
45 file and include information supporting the additional personal  
46 injury trust claims.

47 b. Within 10 days of receiving the defendant's motion, the  
48 plaintiff shall:

1 (1) File the personal injury trust claims;

2 (2) File a written response with the court stating why there is  
3 insufficient evidence for the plaintiff to file the personal injury trust  
4 claims; or

5 (3) File a written response with the court requesting a  
6 determination that the cost to file the personal injury trust claims  
7 exceeds the plaintiff's reasonably anticipated recovery.

8 c. (1) If the court determines that there is a sufficient basis for  
9 the plaintiff to file a personal injury trust claim identified in the  
10 motion to stay, the court shall stay the personal injury or tort action  
11 until the plaintiff files the personal injury trust claim and produces  
12 all related trust claims materials.

13 (2) If the court determines that the cost of submitting a personal  
14 injury trust claim exceeds the plaintiff's reasonably anticipated  
15 recovery, the court shall stay the personal injury or tort action until  
16 the plaintiff files with the court and provides all parties with a  
17 verified statement of the plaintiff's history of exposure, usage, or  
18 other connection to personal injury or tort covered by that personal  
19 injury trust.

20 d. Not less than 60 days after the plaintiff provides the  
21 documentation required under this section, the court may schedule  
22 the personal injury or tort action for trial.

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24 5. a. Not less than 30 days before trial in a personal injury or  
25 tort action, the court shall enter into the record a document that  
26 identifies every personal injury trust claim made by the plaintiff or  
27 on the plaintiff's behalf.

28 b. Trust claim materials that are sufficient to entitle a claim to  
29 consideration for payment under the applicable trust governance  
30 documents may be sufficient to support a jury finding that the  
31 plaintiff was exposed to products for which the trust was  
32 established to provide compensation and that the exposure may be a  
33 substantial factor in causing the plaintiff's injury that is at issue in  
34 the personal injury or tort action.

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36 6. a. Trust claims materials and trust governance documents  
37 are presumed to be relevant and authentic, and are admissible in  
38 evidence in a personal injury or tort action. A claim of privilege  
39 does not apply to any trust claims materials or trust governance  
40 documents.

41 b. A defendant in a personal injury or tort action may seek  
42 discovery from a personal injury trust. The plaintiff may not claim  
43 privilege or confidentiality to bar discovery and shall provide  
44 consent or other expression of permission that may be required by  
45 the personal injury trust to release information and materials sought  
46 by a defendant.

1       7. a. If a plaintiff proceeds to trial before one or more of the  
2 plaintiff's personal injury trust claims is resolved, there shall be a  
3 rebuttable presumption that the plaintiff is entitled to, and will  
4 receive, the compensation specified in the trust governance  
5 document applicable to that person's claim. The court shall take  
6 judicial notice that the trust governance document specifies  
7 compensation amounts and shall establish an attributed value to the  
8 plaintiff's personal injury trust claim.

9       b. In any personal injury claim for which damages are awarded,  
10 a defendant is entitled to a setoff or credit in the amount of the  
11 valuation established under subsection a. of this section plus any  
12 amount the plaintiff has been awarded from a personal injury trust  
13 claim identified in subsection a. of section 5 of this act. If multiple  
14 defendants are found liable for damages, the court shall distribute  
15 the amount of setoff or credit proportionally, according to the  
16 liability of each defendant.

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18       8. a. In a personal injury or tort action, on the motion of a  
19 defendant or judgment debtor seeking sanctions or other relief, the  
20 court may impose any sanction provided by court rule or a law of  
21 this State, including, but not limited to, vacating a judgment  
22 rendered in the action, for a plaintiff's failure to comply with the  
23 disclosure requirements of this act.

24       b. If the plaintiff or a person on the plaintiff's behalf files a  
25 personal injury trust claim after the plaintiff obtains a judgment in a  
26 personal injury or tort action, and that personal injury trust was in  
27 existence at the time the plaintiff obtained the judgment, the trial  
28 court, on motion by a defendant or judgment debtor seeking  
29 sanctions or other relief, has jurisdiction to reopen the judgment in  
30 the personal injury or tort action and adjust the judgment by the  
31 amount of any subsequent personal injury trust payments obtained  
32 by the plaintiff and order any other relief to the parties that the  
33 court considers just and proper.

34       c. A defendant or judgment debtor shall file any motion under  
35 this section within a reasonable time and not more than three years  
36 after the judgment was entered.

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38       9. This act applies to personal injury or tort actions filed on or  
39 after the effective date of this act. The act also applies to any  
40 pending personal injury or tort actions in which trial has not  
41 commenced on or before the effective date of this act. However, if  
42 the application of a provision would unconstitutionally affect a  
43 vested right, the provision shall only be applied prospectively.

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45       10. This act shall take effect on the first day of the tenth month  
46 next following enactment.

STATEMENT

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This bill requires the filing of a claim against a personal injury trust in certain circumstances, addresses the allocation of trust claims, and establishes discovery and scheduling requirements for certain personal injury actions.

A personal injury trust is a trust or compensation fund that is established pursuant to a bankruptcy or other legal action in order to compensate plaintiffs who file claims as a result of harm potentially compensable in a personal injury action, for which the entity that established the personal injury trust is to be responsible. The personal injury trust compensation system operates independently of personal injury civil actions.

It is the sponsor's belief that a lack of transparency and oversight in the personal injury trust compensation system has resulted in suppression of evidence in personal injury or tort actions; statements made in personal injury or tort actions by plaintiffs that are inconsistent with information provided to personal injury trusts, and may reflect inaccurate or untruthful information in support of personal injury or tort litigation by plaintiffs; and unfair compensation for certain personal injury plaintiffs. It is the sponsor's intent, through this legislation, to provide access to documentation that will enable claims to be evaluated based on accurate and reliable information.

Under the bill, a plaintiff who files a personal injury claim or other tort claim must, within 30 days, provide the court with a sworn statement indicating that an investigation of all personal injury trust claims has been conducted and that any personal injury trust claims that can be made on the plaintiff's behalf have been filed. The plaintiff shall provide the parties with copies of all trust claims materials.

The bill also allows a defendant to move the court to stay proceedings if the defendant identifies additional personal injury trust claims the defendant believes the plaintiff can file. In response, the plaintiff may file the claims, explain to the court why there is an insufficient basis to file the claims identified by the defendant, or request a determination from the court that the cost of submitting the personal injury trust claims would exceed the plaintiff's reasonably anticipated recovery. If the court determines that there is sufficient basis for the plaintiff to file the personal injury trust claims, the court shall stay the proceedings until the plaintiff files the personal injury trust claims and provides copies of the trust claims materials to the parties. If the court determines that the cost of filing the personal injury trust claims identified by the defendant exceeds the plaintiff's reasonably anticipated recovery from those trusts, the court shall stay the proceedings until the plaintiff provides the parties with a sworn statement of the

1 plaintiff's history of exposure, usage, or other connection to  
2 personal injury or a tort covered by that personal injury trust.

3 The bill requires the court to enter into the record before trial a  
4 list identifying each personal injury claim the plaintiff has made  
5 against a personal injury trust.

6 Personal injury trust claims and trust claims materials are non-  
7 privileged under the bill.

8 If a defendant is found liable for the plaintiff's injury, the  
9 defendant is entitled to a setoff in the amount of any money the  
10 plaintiff received from a personal injury trust and the value of any  
11 pending trust claims.

12 Sanctions are available against a plaintiff that fails to comply  
13 with the act, including the potential for any judgment to be  
14 reopened and adjusted by the amount of any post-judgment personal  
15 injury trust payments received by the plaintiff.