

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 404 By: Jolley of the Senate  
3 and  
4 Jordan of the House  
5  
6

7 An Act relating to personal injury trusts; creating  
8 the Personal Injury Trust Fund Transparency  
9 Act\*\*\*authorizing certain motion by defendant;  
10 establishing procedures upon identification of  
11 certain trust; requiring court to make certain  
12 determination; requiring court to order filing of  
13 claim under certain circumstances\*\*\*providing for  
14 codification; and providing an effective date.

13 AUTHOR: Add the following House Coauthor: McCullough

14 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill  
15 and insert

16 "An Act relating to personal injury trusts; creating  
17 the Personal Injury Trust Fund Transparency Act;  
18 providing short title; defining terms; requiring  
19 plaintiff in personal injury or tort actions to  
20 disclose certain information; establishing certain  
21 presumption; prohibiting certain claims of  
22 privilege; authorizing certain discovery;  
23 prohibiting scheduling of personal injury trial  
24 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;

1 authorizing certain credits; providing for  
2 sanctions; providing for codification; and providing  
3 an effective date.

4  
5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

15 1. "Personal injury claim" means any claim for damages, loss,  
16 indemnification, contribution, restitution or other relief,  
17 including punitive damages, that is related to bodily injury or  
18 another harm, including loss of consortium, society, or  
19 companionship, loss of support, personal injury or death, mental or  
20 emotional injury, risk or fear of disease or other injury, or costs  
21 of medical monitoring or surveillance. "Personal injury claim"  
22 includes a claim made by or on behalf of the person who claims the  
23 injury or harm or by or on behalf of the person's representative,  
24 spouse, parent, minor child, or other relative. "Personal injury

1 claim" does not include a claim for compensatory benefits pursuant  
2 to crime victim's compensation, workers' compensation or veteran's  
3 benefits;

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

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

19 4. "Trust governance document" means any document that  
20 determines eligibility and payment levels, including claims payment  
21 matrices, trust distribution procedures, or plans for  
22 reorganization, for a personal injury trust.

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

4           REQUIRED DISCLOSURES BY PLAINTIFF.

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

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

22           C.   The plaintiff shall supplement the information and materials  
23 he or she provided under this section within thirty (30) days after  
24

1 the plaintiff files an additional claim, supplements an existing  
2 claim or receives additional information or materials.

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

6 DISCOVERY; USE OF MATERIALS.

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

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

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

24 SCHEDULING TRIAL; STAY OF ACTION.

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

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

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

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

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

1 file a valid claim and the amount of money the trust should pay for  
2 the claim.

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

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

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

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

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

21 C. If the defendant has met its burden under subsection A of  
22 this section, and if the plaintiff files a response pursuant to  
23 paragraph 2 of subsection B of this section, the court shall  
24 determine, for each personal injury trust identified under

1 subsection A of this section, whether there is a good-faith basis  
2 for the plaintiff to file a claim with the personal injury trust or  
3 if the plaintiff does not meet criteria set forth in the personal  
4 injury trust's trust governance documents.

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

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

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

22 2. If the court determines, pursuant to subsection D of this  
23 section, that the plaintiff's or attorney's fees and expenses exceed  
24 the plaintiff's reasonably anticipated recovery from the personal



1 injury trust, the court shall stay the immediate action until the  
2 plaintiff files with the court and produces to all parties a  
3 verified statement of the plaintiff's history of exposure, usage, or  
4 other connection, as relevant, to the products, services, or events  
5 covered by the personal injury trust.

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

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

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

16 VALUATION OF PERSONAL INJURY TRUST CLAIMS; JUDICIAL NOTICE.

17 If a plaintiff proceeds to trial under this section before one  
18 of more of his or her personal injury trust claims is resolved,  
19 there is a rebuttable presumption that the plaintiff is entitled to,  
20 and will receive, the liquidated value specified in the trust  
21 governance document applicable to his or her claim at the time of  
22 trial. The court may take judicial notice that the trust governance  
23 document specifies compensation amounts and payment percentages and  
24

1 shall establish an attributed value to the plaintiff's personal  
2 injury trust claim.

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

6 SETOFFS; CREDIT.

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

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

18 FAILURE TO PROVIDE INFORMATION; SANCTIONS.

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

23 SECTION 10. This act shall become effective November 1, 2013."  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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

\_\_\_\_\_  
Presiding Officer of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Presiding Officer of the Senate