



Senator George Lang
Sponsor Testimony - Senate Bill 63
Senate Insurance Committee
March 8, 2023

Chairman Hackett, Ranking Member Craig, and members of the Senate Insurance Committee, thank you for allowing me the opportunity to come before you and provide sponsor testimony on Senate Bill 63, which seeks to address the indiscriminate and costly naming of defendants in asbestos cases without proof of exposure—a practice known as over-naming.

The average number of defendants named in asbestos cases has tripled since the 1980s. In Ohio, plaintiffs routinely sue twenty or more defendants in each asbestos case. There are numerous cases in which more than 50 defendants, and sometimes nearly 100 defendants, were named. Many defendants named in asbestos lawsuits today have no liability for plaintiffs' injuries. They are innocent bystanders swept into the asbestos litigation.

As one might expect, when companies are named as defendants in lawsuits without a connection to the plaintiff, they are typically dismissed at some point. In fact, roughly 15-20% of the defendants in Ohio asbestos lawsuits in a recent year were voluntarily dismissed. However, over-named defendants must bear an unfair and costly burden to obtain dismissal from cases in which they never should have been named. Dismissal may take two or more years and impose as much as \$25,000 in legal costs; these costs are often repeated across cases for frequently over-named defendants. Over-naming has even contributed to forcing some companies into bankruptcy. It also carries significant costs related to corporate acquisitions, disclosure, and reserves.

Senate Bill 63 seeks to reduce wasteful litigation against wrongfully named asbestos defendants while allowing litigation against potentially culpable defendants to proceed more efficiently. Plaintiffs will be required to file a sworn statement signed by the plaintiff or the plaintiff's counsel specifying the evidence that provides the basis for each claim against each defendant. The sworn statement must be filed within thirty days of the complaint and include supporting documentation.

The sworn statement shall include the name, address, date of birth, marital status, occupation, smoking history, current and past worksites, and current and past employers of the exposed person and any person through whom the exposed person was exposed to asbestos. Furthermore, the statement must include the name, address, and relationship to the exposed person of each person who is knowledgeable regarding the exposed person's exposures to asbestos.

The bill also requires a plaintiff to identify the manufacturer and seller and specific name of each asbestos-containing product to which the exposed person was exposed or the other person was exposed if the exposure was through another person. In addition, the statement shall disclose each location where alleged exposures to asbestos occurred.

Lastly, the statement must include the beginning and ending dates of each exposure, the manner of each exposure, the frequency and length of each exposure, and the proximity of the asbestos-containing product or its use to the exposed person and to each person through whom the exposed person alleges exposure to asbestos, as well as the specific asbestos-related disease that is alleged.

A plaintiff would have a continuing duty to supplement the disclosures, such as when the plaintiff receives new exposure information or learns that a prior disclosure was inaccurate or incomplete.

To reduce the burden on innocent defendants, discovery would not commence against a defendant until the defendant's product or premises is identified in a plaintiff's disclosures.

A defendant whose product or premises is not identified in the required disclosures may file a motion with the court to administratively dismiss the plaintiff's claim against that defendant. The plaintiff shall have thirty days to comply with the bill's disclosure requirements or otherwise respond to the defendant's motion. The court shall administratively dismiss the plaintiff's asbestos claim against the moving defendant or as to all defendants, as applicable, if the plaintiff's disclosures are noncompliant. Pursuant to Ohio's existing "savings statute," a plaintiff will have a year to refile the lawsuit against any dismissed defendant if the plaintiff is able to establish a connection to the defendant and satisfies the required disclosures.

The bill does not apply to a claim for workers' compensation or a claim for veterans' benefits.

Senate Bill 63 will improve Ohio's business and legal climate by reducing wasteful litigation, focusing resources on claims with factual support, and by facilitating settlements of viable claims. Rules governing lawyer ethics are clearly insufficient to prevent over-naming or its ill effects.

Companies and business organizations strongly support Senate Bill 63, though individual companies have been reluctant to publicly discuss their experiences with over-naming. These companies, typically small and mid-sized businesses, fear they will be targeted for retaliation by asbestos plaintiff law firms, driving up expenses for these innocent defendants even higher.

Several states have already adopted legislation that is similar to Senate Bill 63, including Iowa, West Virginia, North Dakota, and Tennessee. Ohio can continue on its upward trend of becoming the most business-friendly state in America by adopting the policies in Senate Bill 63.

I would like to, once again, thank the committee for this opportunity to provide testimony on Senate Bill 63. I am happy to answer any questions.