

## **SB 63 - Require asbestos plaintiff to file specified disclosure statement**

### **Testimony of David K. Root**

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Before the Senate Insurance Committee

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Chairman Hackett, Vice Chairman Lang, Ranking Member Craig, and members of the Senate Insurance Committee thank you for giving me the opportunity to offer testimony in opposition to Senate Bill 63.

My name is David Root, and I am State Legislative Chairman for the Department of Ohio VFW. My job is to advocate on behalf of Ohio veterans and their families. That is why I stand before you today.

I have sent emails to all of you at least once, stating my opposition to Senate Bill 63. A few of you heard my testimony in the Senate Judiciary Committee during the previous General Assembly in opposition to Senator Lang's nearly identical bill SB 252.

In a nutshell SB 63 creates hoops, hurdles, and red tape that veterans would have a very hard time tackling under the best of times. But trying to do it while undertaking the necessary duties required during their final months on earth is next to impossible. They and their families have more important matters to take care of. It is a bill that favors big businesses and insurance companies at the expense of our Ohio veterans. It is being pushed in state after state by Washington special interest groups who know they cannot get Congress to pass a federal bill like this.

You have heard the facts. You know, that in many cases those who file will be filing because they contracted mesothelioma due to asbestos exposure. The only cause of this deadly disease is exposure to asbestos. It can take decades before symptoms begin to show and are often first disguised as some other less serious illness which only delays the correct diagnosis. The average life expectancy is 18 to 30 months after symptoms first appear and there is no cure.

Due to the speed of this cancer and the need of the family to spend the final days with patient care and comfort, and making all the necessary preparations for final arrangements, quite often the lawsuits end up being filed by the grieving spouse or the children. They are not going to be thinking clearly, nor will they have the knowledge to produce the necessary disclosures that SB 63 would require of them. How many times have you heard someone say, "Dad never talked about his time in the service"?

This bill as it is written would require the plaintiff in any tort action who alleges an asbestos claim to file the following:

- The manufacturer or seller of each asbestos or asbestos-containing product and the *specific* product involved in each exposure;
- The *specific* location and manner of each exposure;
- The beginning and ending dates of each exposure;
- The *specific* manner of each exposure;
- As well as bunch of other information

You may have noticed that the word 'specific' was repeated. The title of the bill sets the theme that is played throughout the bill. It says in part... "...to require a plaintiff in a tort action alleging an asbestos claim to file *specified* disclosures."

## **Specified.**

That word, or a variant of that word is repeated throughout the bill. Within the 77 lines of the bill a variant of the word *specific* can be read eight times. That is a lot for such a short bill.

Eight times.

Allow me to explain why that bothers me so much.

I served four years in the US Navy. From 1966 to 1970. During that time, I deployed to the Gulf of Tonkin three times, and I was on an aircraft carrier each time. We know that all Naval ships in the 1960s were loaded with asbestos. But do we know *specifically* where it was on the ship? If I come down with an asbestos causing disease, for me or my wife to file a tort action asbestos claim SB 63 would require us to disclose all of the following, *and it must be specific...*

I must disclose the manufacturer and seller and the specific name of each asbestos-containing product, including, but not limited to, all brand and trade names of that specific asbestos-containing product.

The beginning and ending dates of each exposure, the specific manner of each exposure, the frequency and length of each exposure, and the proximity of the asbestos-containing product.

For each exposure to an asbestos-containing product each site and the specific location at each site, including the address of each site, where the exposed person was exposed.

How much of all that did I know back in the 1960s? How much of that do you think I could remember now, more than fifty years later? I'm at the age when I can't remember why I just walked into the kitchen. How much of that do you think my kids ever knew?

The requirement that worries me the most is the last requirement I read. It says disclose the specific location at each site including the address of each site. I was in an air squadron, and it was on the USS Kitty Hawk and my official address was one of two FPOs. An FPO is a Fleet Post Office and there is one in California and one in New York. My mailing address had my Name, Rank, Service number, Squadron name and the FPO. The words USS Kitty Hawk were not part of my address. Yet my mail was always delivered to me whether the Kitty Hawk was in the Sea of Japan, the Tonkin Gulf, the middle of the Pacific Ocean or tied up to a pier in San Diego or in the Philippines Islands. So... What was my specific address?

On board a US Naval ship every compartment has its own address. I lived at one address and worked at another. I ate my meals at one of two addresses. I showered and shaved at another address. Sick bay, the four barber shops, the two ship stores, the pilots' ready room, and the squadron personal office all had their own address. Are those the specific addresses I would need to disclose? I didn't know most of those addresses when I was aboard ship, and I certainly would not remember any of them now.

Senate bill 63 has hoops for a veteran to go through but those hoops are also going to be on fire when 'specific' is thrown in more than half a dozen times. The hurdles aren't going to be high hurdles they are going to be extreme hurdles. The red tape will become steel cable. A veteran's family members will have no chance at all if this bill becomes part of the ORC.

Back in March I met with Senator Lang in his office, and we discussed division (H) of the bill. The last two lines. This had not been in his previous bill (SB 252). I was confused by it and not sure what it meant. I was led to believe that the intent of it was to exempt veterans from the bill. I didn't think it was very

clear as it was written so the next day, I emailed a draft of how I thought it should be written so that there would be no misunderstanding as to its intent and asked that division (H) be amended.

Division (H) is currently written as follows... (H) This section does not apply to a claim for workers' compensation or a claim for veterans' benefits.

This is my draft for an amendment... (H) Sec. 2307.931 does not apply to any veteran of the armed forces uniformed services of the United States or of their reserve components, including the national guard of any state. As used in this section, "uniformed services" has the same meaning as in 10 U.S.C. 101.

There was no motion to amend it at the last hearing in this committee. To the best of my knowledge at this time (as I am writing this) Senate Bill 63 has not been amended.

Let me close by saying that until Senate bill 63 is amended in such a way that the veterans who served our great country or state do not have to jump through flaming hoops, vault extreme hurdles, or hacksaw their way through steel cables, I will adamantly oppose it and will continue to advise the 90,000 members of the Ohio VFW and its Auxiliary to do the same.

I appreciate this opportunity to testify on behalf of all Ohio's veterans and I will try to answer any questions the committee might have for me.