



North Dakota Association for Justice

"The Trial Lawyers of North Dakota"
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OPPOSE HB 1207 **The Asbestos Industry Immunity Act**

Good morning Chairman Klein and members of the Senate Industry, Business and Labor Committee, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. I am here today to urge a DO NOT PASS on HB 1207.

The asbestos industry wants you to believe HB 1207 is a combination of two bills meant to eliminate "over naming" and prioritize "sick" asbestos victims over "non-sick" claimants. Nothing could be further from the truth.

HB 1207 is an asbestos industry bailout bill. The asbestos industry made billions of dollars selling and installing a deadly product across America without warning workers and consumers of its consequences. Asbestos is still present in products all across America, yet the industry has failed to identify those products with asbestos publicly so that they can be handled with the care necessary to avoid injuring another generation of workers. Instead, they are building on their legacy of knowingly poisoning millions of Americans and killing thousands every year by pushing to strip victims of their constitutional rights. Why should an industry that has failed to correct its "mistakes" be afforded any protection—much less the unprecedented, unconstitutional protections included in this bill?

This bill strips workers of constitutional rights in a half dozen different ways. It creates a unique, arbitrary, and unconstitutionally pleading requirement specific only to an industry renowned for its widespread misconduct. It gives blanket immunity to defendants who incorporated asbestos products into their product design. It forces plaintiffs to beg their treating physician to work for free to produce a detailed medical report that is completely unnecessary. It artificially excludes painful, chronic, debilitating diseases caused exclusively by asbestos from a remedy—effectively shifting the cost of causing this harm onto the backs of the survivor or their family. It does even more than that too. The result is that the North Dakota citizens, families, and taxpayers will be forced to pay for the harms caused by the asbestos industry when they can no longer be held accountable.

HB 1207 has nothing to do with "over naming," it is solely drafted to rig the rules against asbestos plaintiffs to force them—and them alone—to meet an extreme pleading standard before pursuing a claim.

- North Dakota Rule 8 says that a claim for relief must include a "short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for the relief sought." Under this existing rule, if a defendant is not adequately put on notice of a claim against them, then they may seek



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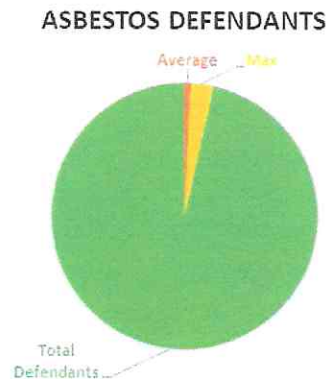
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dismissal—meaning they already have a way out of claims if they are “over named.” HB 1207 has nothing to do with “over naming” - it seeks to force plaintiffs to jump through unnecessary pleading requirements or be completely forced out of court before they can even begin to make their case.

Asbestos was used by *thousands of* companies and found in most industrial components manufactured for the better part of a century.

- [There are over 8,400 unique asbestos defendants.](#) The average complaint against asbestos companies' names ~65 defendants and the highest ever noted named 290 defendants in a complaint. These complaints are not “over-naming” defendants they are targeted complaints in an industry where there was *widespread* use of a deadly and dangerous product.



HB 1207 strips both “sick” AND “nonsick” plaintiffs of constitutional rights.

- The proponents of this legislation say that it is about protecting “sick” plaintiffs by “prioritizing” them over the “nonsick.” Yet, this bill gives both explicit and implicit immunity to defendants who knowingly exposed hundreds or thousands of workers to deadly asbestos toxin. The only people this bill “protects” are asbestos and insurance company shareholders. Stripping dying asbestos plaintiffs of their constitutional right to a jury trial does nothing to help North Dakota citizens. Each year, 12 - 15,000 people die because of asbestos exposure. To say that one disease is worse than the other is absurd.

HB 1207 erects impossible barriers for sick plaintiffs before they can even get to court.

- Rather than streamline claims, this bill erects unjustified bureaucratic legal red-tape that sick and dying plaintiffs must navigate to bring an asbestos claim. It forces plaintiffs to pay out of pocket to undergo dozens of potentially unnecessary tests. It forces plaintiffs to beg (and pay) their local town doctor to write a detailed medical report and submit it under penalty of perjury to a court. The local doctor and their report are then subject to blistering attack by highly paid asbestos defendants experts. If a plaintiff succeeds in this, then they have finally clawed their way back to square one and can begin the already onerous and burdensome litigation process from the same place as



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every other plaintiff. There is no justification for imposing these pointless bureaucratic hurdles on citizens trying to enforce their constitutional rights.

HB 1207 arbitrarily decides that dying from asbestosis is different than dying from mesothelioma.

- This legislation distinguishes asbestos cancers from non-cancers, making it harder (if not impossible) to bring a "non-malignant asbestos disease" claim. Asbestosis is a "non-malignant asbestos disease." Asbestosis is arguably worse than an asbestos cancer as it draws out the pain—breathing becomes excruciatingly painful and often leads to a slow death from lung or heart failure. There is no known cure for asbestosis. Asbestosis kills thousands of people annually across the country, [including 55 people between 1999 and 2013 in North Dakota](#). These citizens are entitled to the same constitutional rights as anyone else to hold the people who poisoned them accountable.

HB 1207 forces asbestos patients to pay thousands for medically unnecessary tests just so that they can get into court.

- No treating physician wants to be dragged into the middle of their patient's legal case, but this legislation forces them to be. Most will refuse, but even if they did choose to help, they will be forced to spend hours of their time and tens of thousands of dollars running tests that are medically unnecessary. This bill sets out dozens of criteria that victims must meet to bring a case. Further, it requires the patient to pay out of pocket for these expensive tests. Once the initial threshold showing is met, this report is thrown out and may not be entered as evidence at trial! The plaintiffs is forced to pay tens of thousands of dollars just to get back to square one. Why should asbestos corporations get to force plaintiffs to pay tens of thousands of dollars at the very end of their life for needless medical tests simply to exercise a constitutional right?

HB 1207 makes it impossible for victims exposed to more than one source of asbestos from ever bringing a claim.

- Victims of asbestos disease often worked with, and were exposed to, dozens, or hundreds, of different products containing asbestos. In section 32-4.2-04 and 32-46.3-05, the bill requires plaintiffs to make a "prima facie" showing as to *each defendant* - meaning the local town "qualified physician" must certify that *each defendant's* asbestos was a substantial contributing factor to the plaintiff's disease. The only purpose for this section is to prevent any claim from ever being brought—and exemplifies the entire purpose of this bill.



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HB 1207 extends well beyond the contexts of legacy asbestos exposure claims into asbestos exposure claims that continue to happen daily.

- Asbestos is still legal, and still everywhere in the United States. Reporters have been writing for years about the "third wave" of asbestos exposure to millennials and generation X happening today. These exposures are happening because the manufacturers AND sellers of asbestos products failed to warn that a product contains asbestos and that asbestos was dangerous. These industries have fought for years against federal legislation that would require them to publicly identify where asbestos products are being stored to protect workers who may be unknowingly working with them today.
- For example, this legislation would impact claims for property damage at a school where asbestos tiles were improperly pulverized, potentially exposing hundreds of workers and school children to asbestos diseases. This legislation would force families to bear the cost of this recklessness in the form of personal injury, medical monitoring costs, and the fear that such exposure causes. Similarly, it shuts down class actions where thousands of workers were unknowingly exposed to asbestos insulation when laying natural gas pipelines, *today*. Someone has to pay for their medical monitoring—this bill forces the workers themselves or the state through Medicaid to pay for this monitoring instead of the company that knowingly exposed them to this danger, *today—over a century after we first learned how deadly asbestos could be.*

HB 1207 does absolutely nothing for the victims of the asbestos public health crisis.

- Asbestos is responsible for up killing up to 15,000 people each year in the U.S., many of whom living and work in North Dakota. The asbestos industry hid the danger of asbestos exposure for decades. Many Americans might think it's been banned, but it has not. It's lethal, legal, and continues to pose serious risks to millions of American families. If the legislature does anything about asbestos disease, it should be to protect the North Dakota families that have been recklessly exposed to asbestos by an industry that hid the danger for decades.

During discussion in the House Judiciary Committee, Judge Irby urged the committee to transition this bill into a study. The reasons for the study were as follows:

- HB 1207 mandates specific and significant pre-trial requirements to bring forward an asbestos action. Through substantial effort, Plaintiffs must establish a *prima facie* case and clear significant hurdles to do so within a relatively short period of time. This increases the cost significantly prior to any trial and will extend the time before any plaintiff can seek justice.
- Each defendant in each case – and there are often upwards of 100 defendants – will



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be able to challenge the timeliness and the sufficiency of what the plaintiff has provided for a prima facie case. Substantial litigation and time will be used in pretrial litigation over these requirements. This would cost the court hours and additional costs to preside over just one case.

- Given the significant impact this legislation will have on asbestos case management, a study on the impact to the court -both time and costs – is recommended prior to implementation of any changes

We urge you to commit to a DO NOT PASS on this legislation or amend the legislation to a study. As you have heard, the proponents of this legislation are Washington DC attorneys that are asking you to reform our laws like other states. North Dakota's asbestos laws are not flawed, but if changes are needed - we ask you to support Judge Irby's request of a study prior to implementation.

If you have any questions or would like additional information, I will be happy to answer any questions.

Thank you,

Jaclyn Hall
North Dakota Association for Justice