



Judicial Impact Statement

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SB 63 – Disclosure Requirements in Asbestos Claims

SB 63
As Passed By Senate
Insurance Committee

Sen. Lang

Title Information

To require a plaintiff in a tort action alleging an asbestos claim to file specified disclosures.

Background

The ubiquity of asbestos in products means that individuals frequently were exposed to asbestos from more than one source and thus, plaintiffs often file claims with more than one bankruptcy trust while also filing tort actions against companies that are still solvent. However, the asbestos bankruptcy trust system is separate from state court systems, which makes it more difficult for the state courts and each trust to fairly adjudicate responsibility and apportion liability. The difference in filing requirements and the lack of transparency between the two systems also creates a situation where fraud and abuse can flourish.

To alleviate these issues and to ensure full, transparent disclosure of all sources of plaintiffs' asbestos exposure from the start of the tort action, in 2013, Ohio became the first state in the nation to enact legislation to require asbestos bankruptcy trust transparency reform.

Judicial Impact

Rule 8(A) of the Civil Rules of Practice and Procedure, promulgated by the Supreme Court, calls for any plaintiff in a civil case to provide “a short and plain statement of the claim.” Time and again, Ohio courts have explained that this rule simply requires that a plaintiff’s complaint in a civil case give “notice” to the defendant about the claim. See, e.g., *Maternal Grandmother v. Hamilton County Dept. of Job & Family Servs.*, 167 Ohio St.3d 390, 2021-Ohio-4096, ¶ 10 (“a party will not be expected to plead a claim with particularity”); *Ragazzo v. City of Willowick*, 2017-Ohio-9337, 103 N.E.3d 65 (11th Dist.) (“a plaintiff is not required to prove his or her case at the pleading stage”).

The rule has been implemented by the Supreme Court under that Court’s constitutional authority. Article IV, Section 5(B) of the Ohio Constitution gives to the Supreme Court the sole power to issue court rules that govern the procedures to be followed in Ohio courts. See *Morris v. Morris*, 148 Ohio St.3d 138, 2016-Ohio-5002 ¶ 30 (“Procedural rules promulgated pursuant to the

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio’s court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

Modern Courts Amendment supersede conflicting statutes that affect procedural matters”); *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, 2012-Ohio-552, ¶ 12 (“if a rule created pursuant to Section 5(B), Article IV conflicts with a statute, the rule will control for procedural matters”).

Because Senate Bill 63 purports to create new procedures that an asbestos plaintiff would need to meet to initiate a civil claim for damages in Ohio’s courts, our Committee believes that the bill would be unenforceable because it would improperly trample on the Supreme Court’s authority to establish procedural rules in the State. As Article IV, Section 5(B) of the Constitution says, “All laws in conflict with such rules shall be of no further force or effect.”

Similarly, the bill contain provisions that appear to conflict with two other procedural rules promulgated by the Supreme Court. Those other rules are Civil Rule 26, which governs the discovery process – that is, the exchange-of-information process – that the Court has established for civil cases, and Civil Rule 41, which governs the dismissal of cases.

Conclusion

In short, we respectfully suggest that the bill, if enacted in its current form, would likely be struck down as unconstitutional. See *Rockey v. 84 Lumber Co.*, 66 Ohio St.3d 221, 224-225, 1993-Ohio-174 (striking a state statute that attempted to regulate the content of civil complaints for damages in excess of \$25,000)

The bill’s enactment could also pose a significant burden to plaintiffs who are seeking redress for asbestos claims, which may create a negative impact on public confidence in the law and in the administration of justice. A well-functioning discovery process already exists in Ohio civil cases, including asbestos cases. Asbestos cases have become increasingly rare in Ohio courts, in any event, due in part to the challenges that many would-be plaintiffs already face in proving liability.