

## Critics say proposed bill would hold up asbestos lawsuits until plaintiffs die



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While deaths from asbestos are still on the rise, one state lawmaker is proposing a law that trial attorneys say will string out asbestos-related injury cases until the victim dies.

State Rep. Andre Jacque, R-DePere, says the bill, [AB 19](#), prevents overzealous attorneys from “double-dipping” on jury awards.

“It basically addresses the fact that you have trial attorneys, plaintiffs’ counsel, that in zealously

advocating for their clients are trying to seek additional awards beyond what fair compensation might be, as a result, in some cases depleting trust funds that should be available to compensate other victims,” Jacque says.

Not surprisingly, trial lawyers see it differently. They say the law is a way to hold up cases, possibly for years.

Here’s what the Wisconsin Association for Justice, the trial lawyers association, says: “The requirements of AB-19 will essentially create so many hurdles that many of the asbestos victims will die before discovery ensues and their testimony is preserved. It is exceedingly difficult to gather evidence from 30-50 years ago and make a case if you have no testimony from the person who actually was exposed to the asbestos.”

The proposal by Jacque, a member of the Assembly Judiciary Committee, doesn’t actually mention the word “asbestos,” but he concedes that asbestos cases would be specifically affected by the legislation.

The bill would require plaintiffs who sue to disclose whether or not they intend to file a claim against a personal injury trust. If they do, the court has to stay court proceedings in the case until the plaintiff produces evidence to support the claim.

More than 60 asbestos-related personal injury trusts, established after a rash of lawsuits forced bankruptcy claims, have been established in the U.S. to compensate present and future victims, according to [this U.S. Government Accountability Office document](#).

It’s no accident that laws are now being proposed in several states to stymie asbestos-related lawsuits. While miners, factory workers, shipyard workers, insulators and a host of other laborers have been dying from exposure to asbestos for decades, a latency period of up to 50

years pretty much guarantees that there will be staggering numbers of asbestos-related deaths — and lawsuits — in the future.

Richard Lemen, a retired assistant surgeon general who consults for plaintiffs in asbestos lawsuits, told a Senate committee in 2007 that an estimated 189,000 to 231,000 workers died from asbestos-related diseases from 1980 to 2007.

“Another 270,000 to 330,000 deaths are expected to occur over the next 30 years,” he told the committee.

(I pulled Lemen's statements from this excellent [McClatchy story](#) on asbestos deaths.)

Inexpensive, resilient and heat-resistant, asbestos was widely used in the construction, insulation and shipbuilding industries, all of which are well-represented in Wisconsin.

While there were only 14 asbestos-related lawsuits filed in Wisconsin in 2011, and nine in 2012, there could be a considerable increase by the mid-2020s, when some experts say the asbestos epidemic will begin to wind down, according to [this RAND Corp. study](#).

“This is prospective legislation,” says Jacque, “so it’s forward looking.”

Jacque says the bill is based on a similar law in Ohio that went into effect last year. He says it prevents trial lawyers from “double-dipping,” that is, winning damages from a personal injury trust and from a solvent company as well.

But Racine attorney Jill Rakauski, who has handled hundreds of asbestos cases, says exposure is rarely tied to just one source.

“The fact is, most of these people worked in construction settings where they’re exposed to a multitude of products from different manufacturers, whether it’s drywall, floor tile, insulation.”

Those lobbying for Jacque’s bill include the Wisconsin Builders Association, Wisconsin Manufacturers & Commerce, the Wisconsin Insurance Alliance and the Wisconsin Paper Council, according to the state Government Accountability Board's online [lobbying database](#). Also lobbying for the bill is the Wisconsin Civil Justice Council, a tort reform group that Jacque says brought the proposal to him.

A [similar proposal](#) also exists as model legislation with the [American Legislative Exchange Council](#), a clearinghouse for conservative state legislative proposals, but Jacque, who says he discontinued his membership with the group this session, also says he didn’t utilize that legislation.

Jacque maintains the bill is not intended to hold up court cases, but rather to limit jury awards to reasonable amounts.

“I understand that this is taking away deeper pockets, basically double-dipping, that those attorneys might be going after,” he says. “But I think the truth of the matter is this could really speed up the situation.”

The speed would result from the fact that lawyers for the asbestos companies wouldn’t have to make time-consuming requests for discovery, that is, evidence of the claims against the trusts,

Jacque says.

“Totally not true,” says Rakauski. “Exactly the opposite.”

Rakauski says plaintiffs are required to provide all information about claims against the trusts. But having them do that at the beginning of the process sets up a kind of Catch-22.

“You have to get the evidence, which is generally developed in the case,” she says. “So if the case is stayed and you can’t even get the evidence, I don’t know how you can submit the claim.”

In short, requiring plaintiffs to gather evidence to support claims for personal injury at the front end of the legal process — evidence that would otherwise surface during ongoing litigation — could add years to a case, Rakauski says. Additionally, she says the trusts often pay little in the way of damages.

As an example of the effects of the proposal, Rakauski points to Donald Krueger, a life-long employee at Pulliam Power Plant in Green Bay. Krueger developed mesothelioma (a form of cancer often linked to asbestos) and, in 2007, sued several companies that manufactured products containing asbestos that were used at the plant.

Even under current law, he barely had time to provide testimony.

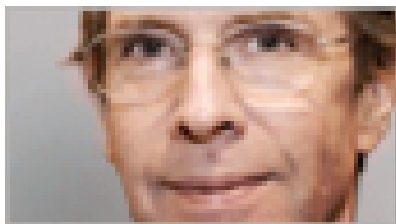
“He died in the middle of his two depositions,” Rakauski says.

“This bill basically holds up the case until you file all these claims, which they’re still in the process of filing in (Krueger’s) case because they take a long time. He would have died long before” he was able to testify.

And once the victim of asbestos exposure dies, it’s difficult to make the case, Rakauski says.

“Most people know what they worked with,” she says. “And once they die, you’re relying on someone who may have worked with them one day a week, or saw them in passing. A person is their own best witness, and if they pass away before their testimony is preserved that substantially reduces the value of the case. Not only that, the witnesses are always in their 70s and 80s, so anytime you put a year delay on something, anyone can pass away.”

## Steven Elbow



**Steven Elbow**

Steven Elbow joined The Capital Times in 1999 and has covered law enforcement in addition to city, county and state government. He has also worked for the Portage Daily Register and has written for the Isthmus weekly newspaper in Madison.

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