

BRYAN CUTLER, MEMBER
100th LEGISLATIVE DISTRICT

HARRISBURG OFFICE:
147A EAST WING
P.O. BOX 202100
HARRISBURG, PA 17120-2100
(717) 783-6424
FAX: (717) 772-9859

DISTRICT OFFICE:
207 E. STATE STREET
QUARRYVILLE, PA 17566
PHONE: (717) 786-4551
FAX: (717) 786-3645

RepCutler.com
[Twitter.com/RepBryanCutler](https://twitter.com/RepBryanCutler)
[Facebook.com/RepBryanCutler](https://facebook.com/RepBryanCutler)



House of Representatives
Commonwealth of Pennsylvania
Harrisburg

COMMITTEES

HEALTH COMMITTEE
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LOCAL GOVERNMENT COMMITTEE
GAME & FISHERIES COMMITTEE

MEMORANDUM

March 6, 2012

TO: All House Members

FROM: Representative Cutler *BKC*

RE: Co-sponsorship-Fairness in Asbestos Litigation Act

In the near future, I plan to introduce legislation creating the Fairness in Asbestos Litigation Act. This bill is intended to address a loophole in our current system of assessing responsibility for damages in asbestos-related suits. Twenty-two other states' allocation systems assess responsibility properly in these cases; it is time Pennsylvania did the same.

Asbestos lawsuits date to the 1970's when companies that mined and milled asbestos or that incorporated significant percentages of the material in products used in the workforce were the primary targets of damage suits. Beginning in the 1980's and substantially accelerating in the last decade through today, however, many of those companies have used federal bankruptcy laws to shield them from suit in exchange for funding stand-alone trusts. These trusts, formed by asbestos miners, manufacturers and fabricators of asbestos products, make over \$30 billion available to qualifying injured parties. However, some claimants who receive money from these trusts have also filed suits against businesses down the supply chain. These businesses, often with peripheral connection to any injury, have in some cases been forced to shoulder massive liability as a result of these suits.

A major problem with asbestos-related litigation is that all parties do not currently have access to all relevant information. When suits are filed, clever timing in presenting trust

claims can be used to avoid discovery responsibilities with regard to exposure allegations and to prevent not only the disclosure of trust payments to a plaintiff but also the fair allocation of liability to a trust, which often was formed by the most responsible party for a plaintiff's asbestos-related injuries.

My bill corrects this by requiring plaintiffs to disclose all asbestos exposure information and to indicate whether they have submitted a claim based on asbestos exposure to a trust or are eligible to submit a claim for asbestos exposure to a trust. This bill also allows the fault of the trusts to be considered by a jury in accordance with our recently passed Fair Share Act. Disclosure of this information will allow a judge or jury to consider all asbestos exposures, claims which have been or could be submitted to a trust and claims which have been paid by a trust, in some cases as much as \$1.6 million per claimant, as part of an asbestos-related suit.

Should you wish to join me in co-sponsoring this legislation, please contact my Harrisburg secretary, Jennifer at jwilliam@pahousegop.com or 783-6424.

BC/jjw