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**ON BEHALF OF THE U.S. CHAMBER INSTITUTE FOR
LEGAL REFORM IN SUPPORT OF H.B. 1207**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify in support of H.B. 1207 on behalf of the U.S. Chamber Institute for Legal Reform, a division of the U.S. Chamber of Commerce. The U.S. Chamber is the world's largest business organization representing companies of all sizes across every sector of the economy. Its members range from the small businesses and local chambers of commerce that line the Main Streets of America to leading industry associations and large corporations. The U.S. Chamber is proud to count many North Dakota businesses among its broad membership.

H.B. 1207 contains a number of common sense reforms that find support in other states.

First, H.B. 1207 gives priority to asbestos plaintiffs who can demonstrate impairment according to objective criteria utilized by the medical community. In short, the legislation says an asbestos plaintiff needs to be sick in order to sue. This reform allows courts and defendant companies to focus their resources on the most severely injured while preserving the right of the presently uninjured to sue at a later time should a cancer develop.

This approach has been enacted in 10 states¹ and adopted by courts in major asbestos filing jurisdictions such as Chicago, New York City, Boston, and Baltimore. The approach also finds support in Shared State Legislation adopted by the Council of State Governments (2006); resolutions adopted by the National Conference of Insurance Commissioners and National Conference of Insurance Legislators (NCOIL); and an ABA resolution (2003) supporting the enactment of federal asbestos legislation to advance only those cases of individuals with demonstrated physical impairment. Lawyers who primarily represent cancer victims have spoken in support of such reforms in the past.

Second, H.B. 1207 also helps to ensure that plaintiffs with actual impairment are suing the proper defendants with an actual connection to the plaintiff. Iowa passed a similar law last year.

There has been a dramatic rise in the number of defendants named in asbestos personal injury or death lawsuits. Between 2010 and 2013, some North Dakota asbestos cases named between 160 and 180 unique defendants. More recently, the number has been as high as 75 (2019) and 94 (2017). According to KCIC consulting's national data, "it is believed that many defendants are named frequently with no proof of exposure."

Defendant companies can collectively spend many thousands of dollars in defense costs and loss of productivity to be released from individual cases in which there was never proof of exposure. In situations where defense costs are paid throughout insurance, higher premiums may result and there is potential erosion of policies that may be needed to pay future plaintiffs with legitimate claims.

The cost associated with improper naming of defendants in asbestos actions has contributed to employer bankruptcies. For example, in the January 2020 bankruptcy filing of DBMP LLC, the holding company for the legacy asbestos liabilities of CertainTeed, DBMP notes that more than half of

¹ Texas, Ohio, Iowa, Kansas, Tennessee, West Virginia, Oklahoma, Georgia, South Carolina, and Florida.

“claims filed against [CertainTeed] after 2001 were dismissed—usually because the plaintiff could provide no evidence of exposure to a [CertainTeed] asbestos containing product.” Additionally, according to ON Marine, another company that filed bankruptcy related to asbestos liabilities in 2020, 95% of the over 182,000 asbestos personal injury claims filed against it since 1983 were dismissed without payment to a plaintiff. The negative economic impacts of COVID-19 augment the need to help businesses avoid wasted expenditures.

H.B. 1207 creates a mechanism to ensure that there is an evidentiary basis for each claim against each defendant named in an asbestos personal injury or death action. It will cut down on unnecessary litigation and wasted defense costs, facilitate settlements, and focus judicial resources on claims with evidentiary support.

Third, H.B. 1207 will help ensure that asbestos trials both efficient and fair by allowing courts to consolidate for trial only asbestos actions relating to the exposed person and members of that person’s household.²

Fourth, H.B. 1207 codifies a legal doctrine called the “bare metal” defense, which holds that a manufacturer or seller of a product, such as a pump, is not liable for later-added external thermal insulation or replacement internal components, such as gaskets, made or sold by a third party. This is consistent with traditional North Dakota law holding that manufacturers are responsible for products they put in the stream of commerce but are not liable for injuries caused by copycat or other products made by competitors and other companies.³

Fifth, H.B. 1207 amends North Dakota’s existing innocent seller liability reform statute to permit a seller to obtain dismissal when the seller has simply been part of the chain of distribution of a product and has not itself acted negligently.

Conclusion

For these reasons, the U.S. Chamber of Commerce supports enactment of H.B. 1207.

² 6 states—Georgia, Iowa, Kansas, Tennessee, Texas, and West Virginia—have enacted laws generally precluding the joinder of asbestos cases for plaintiffs who are not members of the same household.

³ See, e.g., *Morrison v. Grand Forks Hous. Auth.*, 436 N.W.2d 221, 224 (N.D. 1989) (stating that, to recover in product liability, “the plaintiff must prove there was a ‘defect’ in the defendant’s product”); *Reagan v. Hi-Speed Checkweigher Co.*, 30 F.3d 947, 948 (8th Cir. 1994) (explaining that “a plaintiff must prove that there was a defect in the defendant’s product”); *In Re: Zantac (Ranitidine) Prods. Liab. Litig.*, 2020 WL 7866660, at *30 (S.D. Fla. Dec. 31, 2020) (predicting “North Dakota Supreme Court would hold that Plaintiffs’ claims against Defendants [for copycat product made by third party] fail for lack of product identification and for lack of a duty giving rise to liability under North Dakota law”).