



Center for Justice & Democracy's  
Public Policy Clinic  
New York Law School  
185 West Broadway  
New York, NY 10013

**MEMORANDUM IN OPPOSITION TO**  
**THE “FURTHERING ASBESTOS CLAIM**  
**TRANSPARENCY (FACT) ACT OF 2017”**

*The FACT Act would violation the privacy of dying asbestos victims  
and delay payment of legitimate claims.*

**Introduction**

The “Furthering Asbestos Claim Transparency (FACT) Act of 2017 was recently passed by the U.S. House (H.R. 985).<sup>1</sup> This legislation would violate the privacy of asbestos victims and deny and delay compensation to victims of asbestos exposure. Because of the harm this bill will cause dying asbestos victims, a disproportionate number of which are veterans, this bill is strongly opposed by veterans groups, consumer, privacy, and public health organizations.

**Background: Asbestos**

Asbestos is a lethal toxin used in construction materials as a fire retardant and insulator.<sup>2</sup> If asbestos fibers are disturbed (as often happens during demolition, maintenance or repair jobs), the fibers are released into the air. The inhalation of these fibers has serious health consequences, often resulting in mesothelioma - a rare form of cancer that affects the thin lung lining, chest, and abdomen.<sup>3</sup> Because of these serious health risks, the federal government has banned some uses of asbestos.<sup>4</sup> However, due to successful asbestos industry lobbying, asbestos continues to be legal in the United States and is still widely used.<sup>5</sup> Every year, roughly 3,000 Americans die from asbestos-related illness.<sup>6</sup> Some experts put the death-toll as high as 10,000 per year.<sup>7</sup>

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<sup>1</sup> In the House, the FACT Act was combined with a class action bill to become HR 985, the Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017.

<sup>2</sup> Learn about Asbestos, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/asbestos/learn-about-asbestos>

<sup>3</sup> Learn about Asbestos, *supra* 1.

<sup>4</sup> U.S. Federal bans on asbestos. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. <https://www.epa.gov/asbestos/us-federal-bans-asbestos>

<sup>5</sup> See also, Susan Vento, “Asbestos Bill Invades the Privacy of Victims and Veterans.” *Roll Call*, June 3, 2013. [http://www.rollcall.com/news/asbestos\\_bill\\_invades\\_the\\_privacy\\_of\\_victims\\_and\\_veterans\\_commentary-225262-1.html](http://www.rollcall.com/news/asbestos_bill_invades_the_privacy_of_victims_and_veterans_commentary-225262-1.html)

<sup>6</sup> Center for Diseases Control, “Table 37: Deaths from selected occupational diseases among persons aged 15 and over: United States, selected years 1980–2010”; <http://www.cdc.gov/nchs/data/hus/2013/037.pdf>

## Problems with the FACT Act

When it comes to those responsible for causing harm to asbestos victims and paying claims, there are two types: solvent companies, which may be sued in court; and asbestos trusts, before which victims can file claims for compensation. Trusts were set up on behalf of liable companies through the bankruptcy system, allowing companies to concede liability, set aside some money to pay claims,<sup>8</sup> and remain economically healthy. The FACT Act is particularly focused on the trusts and there are major problems with this bill.

First, the bill would require these trusts to disclose victims' personal information on the bankruptcy court's public docket, which is a public web site. This information could include names, birthdates, asbestos exposure history, financial information, compensation, certain medical information, and even part of someone's social security number. This kind of public exposure of private information leaves dying victims and their families vulnerable to identity thieves, con artists and criminals, who could easily find this information online. At the same time, the bill has no disclosure requirements for asbestos companies, which continue to conceal information about their products.

Second, the bill will create enormous burdens on the asbestos trusts that will lead to tremendous delays in processing claims. The FACT Act requires these trusts to respond to endless requests for information from defendants in asbestos litigation, even though the information is irrelevant and the requests violate state discovery laws.<sup>9</sup> When it comes to asbestos-related illnesses, time is of the essence. Mesothelioma victims have only approximately one year to live after diagnosis. By tying up trusts as they must respond to the defendants' limitless requests for information, this process will inherently delay and possibly deny compensation to dying victims.<sup>10</sup>

## Veterans and Others Oppose this Bill

Veterans will be unduly harmed by this legislation. An estimated 30 percent of all mesothelioma victims are veterans.<sup>11</sup> That is why most veterans' organizations oppose this bill,<sup>12</sup> including Military Officers Association of America (MOAA), Vietnam Veterans of America, and the Air Force Sergeants Association.<sup>13</sup>

<sup>7</sup> *Asbestos: Think Again: America's Asbestos Epidemic*, ENVIRONMENTAL WORKING GROUP, <http://www.ewg.org/research/asbestos-think-again/americas-asbestos-epidemic>

<sup>8</sup> Each trust is responsible for and pays for only its own share of the harm, but is often underfunded. As Rand found, "Most trusts do not have sufficient funds to pay every claim in full and ... the median of the payment percentage is 25 percent." [http://www.rand.org/content/dam/rand/pubs/technical\\_reports/2010/RAND\\_TR872.sum.pdf](http://www.rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR872.sum.pdf)

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> "Asbestos and the Military, History, Exposure & Assistance,"

Military.com, <http://www.military.com/benefits/veteran-benefits/asbestos-and-the-military-history-exposure-assistance.html>

<sup>12</sup> *The Coalition Opposing the Fact Act*, Asbestos Nation, <http://www.asbestosnation.org/coalition/>

<sup>13</sup> Veterans Service Organization oppose the "Furthering Asbestos Claims Transparency (FACT) Act"

<http://1yllvogavjh3f7wbx11bxebx.wpengine.netdna-cdn.com/wp-content/uploads/2017/03/Veterans-Oppose-the-FACT-Act.pdf>

Also opposing the FACT Act are consumer, civil rights, immigration, labor, environmental, health, food and product safety, employment, housing, senior citizen, children's, low-income and legal services organizations.<sup>14</sup> Examples of some of these organizations are the Environmental Working Group Action Fund, National Association of Consumer Advocates, and Alliance for Justice.

## **Conclusion**

The FACT Act is not about transparency. It is about harming asbestos victims by releasing private information on a public online forum, and burdening the job of the asbestos trusts, which will be forced to delay paying needed compensation to dying asbestos victims.

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<sup>14</sup> Opposition to H.R. 526, the Furthering Asbestos Claim Transparency Act (FACT Act)  
<http://1yllvogavjh3f7wbx11bxebx.wpengine.netdna-cdn.com/wp-content/uploads/2015/11/2015-Coalition-Opposition-to-FACT-Act.pdf>