

August 22, 2025

ILLINOIS SENATE BILL 328 BROADENS TOXIC TORT LITIGATION JURISDICTION

Chicago Partner Alan S. Zelkowitz recently issued a Litchfield Alert reviewing a new State of Illinois amendment that impacts corporations related to toxic tort claims.

INTRO

Illinois Governor J.B. Pritzker signed Illinois Senate Bill 328 into law expanding the jurisdiction of Illinois courts in toxic tort litigation. The new law amends the Illinois Code of Civil Procedure and the Business Corporation Act of 1983 making foreign corporations subject to general personal jurisdiction in Illinois for toxic tort claims. Significantly, general jurisdiction means that Illinois courts now have jurisdiction over foreign corporations even if the alleged injury or events of the lawsuit occurred outside the State of Illinois.

DETAILS

Going forward, Illinois courts may now exercise general jurisdiction over foreign corporations who register to do business in Illinois or transact business within the state without registering. The extension of jurisdiction only applies if the lawsuit alleges injury or illness resulting from exposure to a toxic substance as defined by the Illinois Uniform Hazardous Substances Act and at least one of the named defendants is properly subject to jurisdiction under the Code of Civil Procedure.

With the amendments, a corporation consents to general jurisdiction upon registering to do business in Illinois. This consent begins at the time of registration or upon the next annual report due date following the bill's effective date. Unregistered corporations who transact business in Illinois are deemed to have consented to general jurisdiction for 180 days following each act of business.

BACKGROUND

In 2023, the U.S. Supreme Court upheld a Pennsylvania statute which required corporations doing business in Pennsylvania to consent to general jurisdiction by registering to do business in the state. The Court found that such a requirement does not violate the Due Process Clause of the Fourteenth Amendment. *Mallory v. Norfolk Southern Railway Co.*, 143 S. Ct. 2028 (2023). SB328 expands on *Mallory* in that SB328 extended the jurisdictional consent to include not only registered entities but also those that conduct business in the state without formal registration.

Corporations that previously registered to do business in Illinois will consent to general jurisdiction on the date their next annual report is due.

Reaction to the amendments, of course, is mixed. The head of the Illinois Trial Lawyers Associations applauded the governor's approval and said that the "sole intent" of the new law is provide justice for people exposed to toxic substances. But critics, like the Illinois Manufacturers Association, say the measure will be bad for business. A group of Republican lawmakers have filed a lawsuit challenging the bill earlier this summer, criticizing it as legalizing "litigation tourism."

SUMMARY

Under the new amendment, any corporation registered to do business in Illinois or that has been involved in a transaction in Illinois is deemed to have consented to general jurisdiction related to toxic tort claims.

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