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Prepare for More Consent-Based Jurisdiction Laws After Illinois SB 328

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The new consent to jurisdiction statute for toxic torts, SB 328, is raising the stakes for life sciences, chemical, and other companies. SB 328 loosens the jurisdictional requirements in Illinois and paves the way for other states to enact similar laws in 2026.

The Illinois law tracks *Mallory v. Norfolk Southern Railway Co., 600 U.S. 122 (2023),* wherein the U.S. Supreme Court affirmed the propriety of a consent to jurisdiction statute in Pennsylvania — a state that is notoriously pro-plaintiff. Illinois used the *Mallory* blueprint to design its own consent-based jurisdictional law that aims to expand litigants' access to yet another plaintiff-friendly jurisdiction.

With Pennsylvania and Illinois creating a framework that additional states may follow, life sciences, chemical, and other companies are exposed to even greater risk than before, making it essential to develop strategies and playbooks to mitigate organizational risk.

SB 328 Overview

Under SB 328, businesses consent to Illinois jurisdiction for toxic tort claims simply by registering to do business in the state. The law also establishes implied consent for unregistered businesses that conduct a business transaction in Illinois. This implied consent lasts 180 days following "each and every such" business transaction. By these terms, Illinois courts arguably may exercise personal jurisdiction over defendants for toxic tort claims arising outside the state although the defendants are neither incorporated nor headquartered in Illinois.

Not only does the statute have a long reach, but the definition of "toxic" is also incredibly vague and overbroad. The statute defines toxic as "any substance (other than a radioactive substance) which has the capacity to produce bodily injury or illness to man through ingestion, inhalation, or absorption through any body surface." As a result, plaintiffs may try to exploit this poorly drafted term in SB 328 to stretch its statutory reach by characterizing many substances as "toxic," including cosmetics, personal care products, cleaning products, pesticides, nutritional and dietary supplements, children's toys, and even automotive products.

After the bill passed, 47 Illinois House representatives sued Speaker Emanuel "Chris" Welch and Senate President Don Harmon. They alleged the statute violated the Illinois Constitution's "Three Readings Rule," which requires a bill to first be read by title on three separate days before it is enacted into law. The circuit court dismissed the case, citing the enrolled-bill doctrine, a principle that presumes a bill is constitutional if the speaker of the House and the president of the Senate certify it was passed according to all procedural requirements. The

court also found that the lawmakers lacked standing because the statute only affects foreign corporations doing business in Illinois. The plaintiffs appealed on September 11, 2025, and that appeal is pending. Other separate constitutional challenges by new plaintiffs to SB 328 are possible and remain likely.

Some potential constitutional arguments that could be raised include the following:

- **Due Process Clause:** SB 328 may violate due process rights because it compels out-of-state companies to submit to general jurisdiction in circumstances where they lack continuous and systematic contacts with the state.
- **Dormant Commerce Clause:**SB 328 may create claims under the dormant commerce clause by imposing a sweeping litigation burden on interstate businesses, which discriminates against or unduly burdens interstate commerce relative to any local benefit.

How Companies Can Prepare for 2026

For now, SB 328 remains enforceable and may significantly impact litigation defense strategies for life sciences, chemical, and other companies across the U.S. Much like in Illinois and Pennsylvania, more consent to jurisdiction laws similar to SB 328 seem likely to follow in 2026 and beyond. These laws exacerbate the issues already arising from long-arm statutes for tortious conduct, including toxic torts, that presently exist in many states. Unless and until constitutional questions are resolved, it is essential for companies to reassess their legal exposure and rethink their approach to contracting and litigation strategies.

1. Monitor Legal Developments in Plaintiff-Friendly Jurisdictions

Companies should regularly track the development of consent to jurisdiction statutes in all states — particularly those in plaintiff-friendly jurisdictions. Currently, Pennsylvania and Illinois are the only two states that have implemented consent by registration laws. New York, another traditionally plaintiff-friendly jurisdiction, proposed a bill that would have codified the Supreme Court's *Mallory* holding, but it was vetoed by the governor.

Beyond consent to jurisdiction laws, companies should also continue to monitor long-arm statutes similar to those enacted in Florida, Georgia, Colorado, Texas, and California, among others, which can potentially create personal jurisdiction for alleged tortious conduct — including a toxic tort — even if the defendant is located outside the state.

2. Audit Your Corporate Footprint

It is especially important now for companies to know where they are actually conducting business and where they have even *minimal* connections to a state. This includes tracking remote employees, contractors, and facilities that plaintiffs may argue create connections, including tenuous ones, to a particular jurisdiction. For companies with a sales force, this analysis must include understanding where company salespersons may travel and solicit sales, even beyond the home state.

Audits should incorporate reviews of contracts for choice of law and forum selection clauses as well.

3. When Possible, Avoid High-Risk Jurisdictions

When feasible, companies should update their foreign filings and business registrations to avoid plaintiff-friendly jurisdictions that allow consent by registration or otherwise have long-arm statutes. Companies should establish internal controls to ensure their foreign filings, registrations, and withdrawals are current.

Companies should also implement internal controls to monitor and mitigate jurisdictional exposure. Developing contracting strategies may help flag certain jurisdictional terms and other measures that can assist in proactively identifying potential risks with business partners and operations.

4. Develop Your Litigation and Contracting Playbook

It may not always be practical or possible to avoid a specific jurisdiction in view of operational realities. Sometimes, a certain degree of contact with a particular state is needed to effectuate company business. In such circumstances where there is an identified litigation risk, companies should prepare litigation playbooks that anticipate claims, pre-identify local counsel, establish e-discovery protocols, and develop removal strategies. Additionally, companies should consider the inclusion of strong indemnification contract terms with strategic partners in high-risk jurisdictions.

Conclusion

Illinois' SB 328 statute marks a growing shift in toxic tort litigation across the nation. As more states consider and enact their own long-arm personal jurisdiction statutes, life sciences, chemical, and other companies must continue to periodically assess their potential litigation exposure in these plaintiff-friendly jurisdictions — including those where they may have limited connections.

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