

By Senator Webster

9-1579B-05

1 A bill to be entitled
 2 An act relating to asbestos-related claims;
 3 providing legislative findings and intent;
 4 defining terms related to asbestos-related
 5 claims; providing that the limitations of
 6 liabilities in the act apply to a corporation
 7 that is a successor and became a successor
 8 before January 1, 1972; providing exceptions to
 9 the limitations of the act; providing that the
 10 cumulative successor asbestos-related
 11 liabilities of a corporation are limited to the
 12 fair market value of the total gross assets of
 13 the transferor determined as of the time of the
 14 merger or consolidation; providing an
 15 exception; providing methods by which to
 16 establish fair market value of total gross
 17 assets; providing for the fair market value of
 18 total gross assets at the time of a merger or
 19 consolidation to increase annually; providing a
 20 methodology by which the fair market value of
 21 the assets is increased; requiring that the
 22 courts liberally construe the act; providing
 23 for severability; providing for applicability;
 24 providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Legislative findings and intent.--The
 29 Legislature finds that the number of asbestos-related claims
 30 has increased significantly in recent years and threatens the
 31 continued viability of a number of uniquely situated companies

1 that have not ever manufactured, sold, or distributed asbestos
2 or asbestos products and are liable only as successor
3 corporations. This liability has created an overpowering
4 public necessity to provide an immediate, remedial,
5 legislative solution. The Legislature intends that the
6 cumulative recovery by all asbestos claimants from innocent
7 successors be limited, and intends to simply change the form
8 of asbestos claimants' remedies without impairing their
9 substantive rights, and finds that there are no alternative
10 means to meet this public necessity. The Legislature finds the
11 public interest as a whole is best served by providing relief
12 to these innocent successors so that they may remain viable
13 and continue to contribute to this state.

14 Section 2. Definitions.--

15 (1) "Asbestos claim" means any claim, wherever or
16 whenever made, for damages, losses, indemnification,
17 contribution, or other relief arising out of, based on, or in
18 any way related to asbestos, including:

19 (a) The health effects of exposure to asbestos,
20 including any claim for:

21 1. Personal injury or death;

22 2. Mental or emotional injury;

23 3. Risk of disease or other injury; or

24 4. The costs of medical monitoring or surveillance, to
25 the extent these claims are recognized under state law;

26 (b) Any claim made by or on behalf of a person exposed
27 to asbestos, or a representative, spouse, parent, child, or
28 other relative of the person; and

29 (c) Any claim for damage or loss caused by the
30 installation, presence, or removal of asbestos.

31

1 (2) "Corporation" means a corporation for profit,
2 including a domestic corporation organized under the laws of
3 this state, or a foreign corporation organized under laws
4 other than the laws of this state.

5 (3) "Successor" means a corporation that assumes or
6 incurs, or has assumed or incurred, successor asbestos-related
7 liabilities.

8 (4) "Successor asbestos-related liabilities" means any
9 liabilities, whether known or unknown, asserted or unasserted,
10 absolute or contingent, accrued or unaccrued, liquidated or
11 unliquidated, or due or to become due, which are related in
12 any way to asbestos claims and were assumed or incurred by a
13 corporation as a result of or in connection with a merger or
14 consolidation, or the plan of merger or consolidation related
15 to the merger or consolidation, with or into another
16 corporation, or which are related in any way to asbestos
17 claims based on the exercise of control or the ownership of
18 stock of the corporation before the merger or consolidation.
19 The term includes liabilities that, after the time of the
20 merger or consolidation for which the fair market value of
21 total gross assets is determined under section 4 of this act,
22 were or are paid or otherwise discharged, or committed to be
23 paid or otherwise discharged, by or on behalf of the
24 corporation, or by a successor of the corporation, or by or on
25 behalf of a transferor, in connection with settlements,
26 judgments, or other discharges in this state or another
27 jurisdiction.

28 (5) "Transferor" means a corporation from which
29 successor asbestos-related liabilities are or were assumed or
30 incurred.

31 Section 3. Applicability.--

1 (1) The limitations in section 4 of this act apply to
2 a corporation that is a successor and became a successor
3 before January 1, 1972, or is any of that successor
4 corporation's successors.

5 (2) The limitations in section 4 of this act do not
6 apply to:

7 (a) Workers' compensation benefits paid by or on
8 behalf of an employer to an employee under chapter 440,
9 Florida Statutes, or a comparable workers' compensation law of
10 another jurisdiction;

11 (b) Any claim against a corporation that does not
12 constitute a successor asbestos-related liability;

13 (c) An insurance corporation, as defined in section
14 717.101, Florida Statutes; or

15 (d) Any obligations under the National Labor Relations
16 Act, as amended, or under any collective bargaining agreement.

17 Section 4. Limitations on successor asbestos-related
18 liabilities.--

19 (1) Except as further limited in subsection (2), the
20 cumulative successor asbestos-related liabilities of a
21 corporation are limited to the fair market value of the total
22 gross assets of the transferor determined as of the time of
23 the merger or consolidation. The corporation does not have any
24 responsibility for successor asbestos-related liabilities in
25 excess of this limitation.

26 (2) If the transferor had assumed or incurred
27 successor asbestos-related liabilities in connection with a
28 prior merger or consolidation with a prior transferor, the
29 fair market value of the total assets of the prior transferor,
30 determined as of the time of the earlier merger or
31 consolidation, shall be substituted for the limitation set

1 forth in subsection (1) for purposes of determining the
2 limitation of liability of a corporation.

3 Section 5. Establishing fair market value of total
4 gross assets.--

5 (1) A corporation may establish the fair market value
6 of total gross assets for the purpose of the limitations under
7 section 4 of this act through any method reasonable under the
8 circumstances, including:

9 (a) By reference to the going concern value of the
10 assets or to the purchase price attributable to or paid for
11 the assets in an arm's-length transaction; or

12 (b) In the absence of other readily available
13 information from which fair market value can be determined, by
14 reference to the value of the assets recorded on a balance
15 sheet.

16 (2) Total gross assets include intangible assets.

17 (3) Total gross assets include the aggregate coverage
18 under any applicable liability insurance that was issued to
19 the transferor whose assets are being valued for purposes of
20 this section, which insurance has been collected or is
21 collectible to cover successor asbestos-related liabilities
22 except compensation for liabilities arising from workers'
23 exposure to asbestos solely during the course of their
24 employment by the transferor. A settlement of a dispute
25 concerning the insurance coverage entered into by a transferor
26 or successor with the insurers of the transferor before the
27 effective date of this act shall be determinative of the
28 aggregate coverage of the liability insurance to be included
29 in the calculation of the transferor's total gross assets.

30 Section 6. Adjustment.--

31

1 (1) Except as provided in subsections (2), (3), and
2 (4), the fair market value of total gross assets at the time
3 of a merger or consolidation shall increase annually at a rate
4 equal to the sum of:

5 (a) The prime rate as listed in the first edition of
6 the Wall Street Journal published for each calendar year since
7 the merger or consolidation, unless the prime rate is not
8 published in that edition of the Wall Street Journal, in which
9 case any reasonable determination of the prime rate on the
10 first day of the year may be used; and

11 (b) One percent.

12 (2) The rate in subsection (1) may not be compounded.

13 (3) The adjustment of fair market value of total gross
14 assets shall continue as provided under subsection (1) until
15 the date the adjusted value is first exceeded by the
16 cumulative amounts of successor asbestos-related liabilities
17 paid or committed to be paid by or on behalf of the
18 corporation or a predecessor, or by or on behalf of a
19 transferor, after the time of the merger or consolidation for
20 which the fair market value of total gross assets is
21 determined.

22 (4) No adjustment of the fair market value of total
23 gross assets shall be applied to any liability insurance
24 otherwise included in the definition of total gross assets by
25 subsection (3) of section 5 of this act.

26 Section 7. Scope.--The courts in this state shall
27 apply, to the fullest extent permissible under the United
28 States Constitution, this state's substantive law, including
29 the limitation under this act, to the issue of successor
30 asbestos-related liabilities. This act shall be construed
31 liberally to accomplish its remedial purposes.

1 Section 8. If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 invalidity shall not affect other provisions or applications
4 of this act which can be given effect without the invalid
5 provision or application, and to this end the provisions of
6 this act are severable.

7 Section 9. This act shall take effect upon becoming a
8 law and shall apply to any civil action asserting an asbestos
9 claim in which the trial has not commenced as of the effective
10 date of this act.

11
12 *****

13 SENATE SUMMARY

14 Provides limitations on asbestos-related claims. Provides
15 that the limitations of liabilities in the act apply to a
16 corporation that is a successor and became a successor
17 before January 1, 1972. Provides exceptions to the
18 limitations of the act. Provides that the cumulative
19 successor asbestos-related liabilities of a corporation
20 are limited to the fair market value of the total gross
21 assets of the transferor determined as of the time of the
 merger or consolidation. Provides methods by which to
 establish fair market value of total gross assets.
22 Provides that the fair market value of total gross assets
23 at the time of a merger or consolidation increases
24 annually. Provides a methodology by which the fair market
25 value of the assets is increased. Provides for the courts
26 to liberally construe the act.
27
28
29
30
31