



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 company, as defined in section  
14 717.101, Florida Statutes;

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

18           (e) A successor that, after a merger or consolidation,  
19 continued in the business of mining asbestos, in the business  
20 of selling or distributing asbestos fibers, or in the business  
21 of manufacturing, distributing, removing, or installing  
22 asbestos-containing products that were the same or  
23 substantially the same as those products previously  
24 manufactured, distributed, removed, or installed by the  
25 transferor.

26           Section 4. Limitations on successor asbestos-related  
27 liabilities.--

28           (1) Except as further limited in subsection (2), the  
29 cumulative successor asbestos-related liabilities of a  
30 corporation are limited to the fair market value of the total  
31 gross assets of the transferor determined as of the time of

1 the merger or consolidation. The corporation does not have any  
2 responsibility for successor asbestos-related liabilities in  
3 excess of this limitation.

4 (2) If the transferor had assumed or incurred  
5 successor asbestos-related liabilities in connection with a  
6 prior merger or consolidation with a prior transferor, the  
7 fair market value of the total assets of the prior transferor,  
8 determined as of the time of the earlier merger or  
9 consolidation, shall be substituted for the limitation set  
10 forth in subsection (1) for purposes of determining the  
11 limitation of liability of a corporation.

12 Section 5. Establishing fair market value of total  
13 gross assets.--

14 (1) A corporation may establish the fair market value  
15 of total gross assets for the purpose of the limitations under  
16 section 4 of this act through any method reasonable under the  
17 circumstances, including:

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

21 (b) In the absence of other readily available  
22 information from which fair market value can be determined, by  
23 reference to the value of the assets recorded on a balance  
24 sheet.

25 (2) Total gross assets include intangible assets.

26 (3) Total gross assets include the aggregate coverage  
27 under any applicable liability insurance that was issued to  
28 the transferor whose assets are being valued for purposes of  
29 this section, which insurance has been collected or is  
30 collectible to cover successor asbestos-related liabilities  
31 except compensation for liabilities arising from workers'

1 exposure to asbestos solely during the course of their  
2 employment by the transferor. A settlement of a dispute  
3 concerning the insurance coverage entered into by a transferor  
4 or successor with the insurers of the transferor before the  
5 effective date of this act shall be determinative of the  
6 aggregate coverage of the liability insurance to be included  
7 in the calculation of the transferor's total gross assets.

8 Section 6. Adjustment.--

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

13 (a) The prime rate as listed in the first edition of  
14 the Wall Street Journal published for each calendar year since  
15 the merger or consolidation, unless the prime rate is not  
16 published in that edition of the Wall Street Journal, in which  
17 case any reasonable determination of the prime rate on the  
18 first day of the year may be used; and

19 (b) One percent.

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

21 (3) The adjustment of fair market value of total gross  
22 assets shall continue as provided under subsection (1) until  
23 the date the adjusted value is first exceeded by the  
24 cumulative amounts of successor asbestos-related liabilities  
25 paid or committed to be paid by or on behalf of the  
26 corporation or a predecessor, or by or on behalf of a  
27 transferor, after the time of the merger or consolidation for  
28 which the fair market value of total gross assets is  
29 determined.

30 (4) No adjustment of the fair market value of total  
31 gross assets shall be applied to any liability insurance

1 otherwise included in the definition of total gross assets by  
2 subsection (3) of section 5 of this act.

3       Section 7. Scope.--The courts in this state shall  
4 apply, to the fullest extent permissible under the United  
5 States Constitution, this state's substantive law, including  
6 the limitation under this act, to the issue of successor  
7 asbestos-related liabilities. This act shall be construed  
8 liberally to accomplish its remedial purposes.

9       Section 8. If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 invalidity shall not affect other provisions or applications  
12 of this act which can be given effect without the invalid  
13 provision or application, and to this end the provisions of  
14 this act are severable.

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

19  
20                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
21                   COMMITTEE SUBSTITUTE FOR  
22                   Senate Bill 2228

23 The committee substitute differs from the underlying bill in  
24 that the committee substitute does not limit the successor  
25 liability of a successor corporation that substantially  
26 continued the asbestos business of the merged or consolidated  
27 company.  
28  
29  
30  
31