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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.

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

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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.

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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.

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