

1                   A bill to be entitled  
 2           An act relating to limitations of asbestos liabilities  
 3           under mergers or consolidations; providing definitions;  
 4           providing application; providing exceptions; limiting  
 5           successor asbestos-related liabilities; providing  
 6           requirements and limitations; providing requirements and  
 7           criteria for corporations to establish fair market value  
 8           of total gross assets; providing for adjustments of the  
 9           fair market value of total gross assets; providing  
 10          limitations and requirements; providing requirements of  
 11          courts in applying state law to certain liabilities;  
 12          providing scope; providing application; providing an  
 13          effective date.

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

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 17           Section 1. Definitions.--As used in this act:

18           (1) "Asbestos claim" means any claim, wherever or whenever  
 19           made, for damages, losses, indemnification, contribution, or  
 20           other relief arising out of, based on, or in any way related to  
 21           asbestos. "Asbestos claim" includes any of the following:

22           (a) A claim made by or on behalf of any person exposed to  
 23           asbestos, or a representative, spouse, parent, child, or other  
 24           relative of the person, for injury, including mental or  
 25           emotional harm, death, risk of disease or other injury, medical  
 26           monitoring or surveillance, or any other health effects that are  
 27           alleged to have been caused by exposure to asbestos.

28        (b) A claim for damage or loss to property caused by the  
29 installation, presence, or removal of asbestos.

30        (2) "Corporation" means a corporation for profit,  
31 including a domestic corporation organized under the laws of  
32 this state or a foreign corporation organized under laws other  
33 than the laws of this state.

34        (3) "Successor" means a corporation, or a subsidiary of a  
35 corporation, that assumes or incurs, or has assumed or incurred,  
36 successor asbestos-related liabilities or had asbestos-related  
37 liabilities imposed by court order.

38        (4) "Successor asbestos-related liabilities" means any  
39 liabilities, whether known or unknown, asserted or unasserted,  
40 absolute or contingent, accrued or unaccrued, liquidated or  
41 unliquidated, or due or to become due, that are related in any  
42 way to an asbestos claim and that were assumed or incurred by a  
43 corporation as a result of or in connection with an asset  
44 purchase, stock purchase, merger, or consolidation, or an  
45 agreement providing for an asset purchase, stock purchase,  
46 merger, or consolidation, including a plan of merger or  
47 consolidation. "Successor asbestos-related liabilities" also  
48 means liabilities imposed on a successor by court order. The  
49 term also includes liabilities that, after the effective date of  
50 the asset purchase, stock purchase, merger, or consolidation,  
51 were or are paid or otherwise discharged, or committed to be  
52 paid or otherwise discharged, by or on behalf of the successor  
53 of the corporation, or by or on behalf of a transferor, in  
54 connection with any settlement, judgment, or other discharge of  
55 such liabilities in this state or another jurisdiction.

56           (5) "Transferor" means a corporation or its shareholders  
57 from which successor asbestos-related liabilities are or were  
58 assumed or incurred or were imposed by a court order on a  
59 successor.

60           Section 2. Application.--

61           (1) The limitations in section 3 shall apply to a domestic  
62 corporation or a foreign corporation that has had a certificate  
63 of authority to transact business in this state or has engaged  
64 in business in this state and that is a successor or which is  
65 any of that successor corporation's successors.

66           (2) The limitations in section 3 shall not apply to:

67           (a) Workers' compensation benefits paid by or on behalf of  
68 an employer to an employee under chapter 440 or a comparable  
69 workers' compensation law of another jurisdiction;

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

72           (c) An insurance company, as defined in s. 717.101; or

73           (d) Any obligations under the National Labor Relations  
74 Act, 29 U.S.C., s. 151 et seq., as amended, or under any  
75 collective bargaining agreement.

76           Section 3. Limitations on successor asbestos-related  
77 liabilities.--

78           (1) Except as further limited in subsection (2), the  
79 cumulative successor asbestos-related liabilities of a  
80 corporation are limited to the fair market value of the total  
81 gross assets of the transferor determined as of the effective  
82 date of a merger or consolidation. The corporation does not have

83 any responsibility for successor asbestos-related liabilities in  
 84 excess of such limitation.

85 (2) If the transferor had assumed or incurred successor  
 86 asbestos-related liabilities in connection with a prior merger  
 87 or consolidation with a prior transferor, the fair market value  
 88 of the total assets of the prior transferor, determined as of  
 89 the effective date of such earlier merger or consolidation,  
 90 shall be substituted for the limitation set forth in subsection  
 91 (1) for purposes of determining the limitation of liability of a  
 92 corporation.

93 Section 4. Establishing fair market value of total gross  
 94 assets.--

95 (1) A corporation may establish the fair market value of  
 96 total gross assets for the purpose of the limitations under  
 97 section 3 through any method reasonable under the circumstances,  
 98 including:

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

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

105 (2) Total gross assets include intangible assets.

106 (3) Total gross assets include the aggregate coverage  
 107 under any applicable liability insurance that was issued to the  
 108 transferor whose assets are being valued for purposes of this  
 109 section and which insurance has been collected or is collectible  
 110 to cover successor asbestos-related liabilities, except

111 compensation for liabilities arising from workers' exposure to  
112 asbestos solely during the course of their employment by the  
113 transferor. A settlement of a dispute concerning such insurance  
114 coverage entered into by a transferor or successor with the  
115 insurers of the transferor before the enactment of this title  
116 shall be determinative of the aggregate coverage of such  
117 liability insurance to be included in the calculation of the  
118 transferor's total gross assets.

119 Section 5. Adjustment.--

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

124 (a) The prime rate as listed in the first edition of the  
125 Wall Street Journal published for each calendar year since the  
126 merger or consolidation, unless the prime rate is not published  
127 in that edition of the Wall Street Journal, in which case any  
128 reasonable determination of the prime rate on the first day of  
129 the year may be used; and

130 (b) One percent.

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

132 (3) The adjustment of fair market value of total gross  
133 assets shall continue as provided under subsection (1) until the  
134 date the adjusted value is first exceeded by the cumulative  
135 amounts of successor asbestos-related liabilities paid or  
136 committed to be paid by or on behalf of the corporation or a  
137 predecessor, or by or on behalf of a transferor, after the time

138 of the merger or consolidation for which the fair market value  
139 of total gross assets is determined.

140 (4) No adjustment of the fair market value of total gross  
141 assets shall be applied to any liability insurance otherwise  
142 included in the definition of total gross assets by subsection  
143 (3) of section 4.

144 Section 6. Scope.--To the fullest extent permissible under  
145 the United States Constitution, the courts in this state shall  
146 apply this state's substantive law, including the limitation  
147 under this act, to the issue of successor asbestos-related  
148 liabilities.

149 Section 7. This act shall take effect upon becoming a law  
150 and shall apply to all asbestos claims filed on or after the  
151 date the act takes effect and to any pending asbestos claims in  
152 which trial has not commenced as of such date.