

CHAMBER ACTION

1 The Judiciary Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

23 severability; providing for applicability; providing an
24 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 has
30 increased significantly in recent years and threatens the
31 continued viability of a number of uniquely situated companies
32 that have not ever manufactured, sold, or distributed asbestos
33 or asbestos products and are liable only as successor
34 corporations. This liability has created an overpowering public
35 necessity to provide an immediate, remedial, legislative
36 solution. The Legislature intends that the cumulative recovery
37 by all asbestos claimants from innocent successors be limited
38 and intends to simply change the form of asbestos claimants'
39 remedies without impairing their substantive rights and finds
40 that there are no alternative means to meet this public
41 necessity. The Legislature finds the public interest as a whole
42 is best served by providing relief to these innocent successors
43 so that they may remain viable and continue to contribute to
44 this state.

45 Section 2. Definitions.--

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

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

- 52 1. Personal injury or death;
- 53 2. Mental or emotional injury;
- 54 3. Risk of disease or other injury; or
- 55 4. The costs of medical monitoring or surveillance, to the
56 extent these claims are recognized under state law.

57 (b) Any claim made by or on behalf of a person exposed to
58 asbestos or a representative, spouse, parent, child, or other
59 relative of the person.

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

62 (2) "Corporation" means a corporation for profit,
63 including a domestic corporation organized under the laws of
64 this state or a foreign corporation organized under laws other
65 than the laws of this state.

66 (3) "Successor" means a corporation that assumes or
67 incurs, or has assumed or incurred, successor asbestos-related
68 liabilities.

69 (4) "Successor asbestos-related liabilities" means any
70 liabilities, whether known or unknown, asserted or unasserted,
71 absolute or contingent, accrued or unaccrued, liquidated or
72 unliquidated, or due or to become due, which are related in any
73 way to asbestos claims and were assumed or incurred by a
74 corporation as a result of or in connection with a merger or
75 consolidation, or the plan of merger or consolidation related to
76 the merger or consolidation, with or into another corporation,
77 or which are related in any way to asbestos claims based on the

78 | exercise of control or the ownership of stock of the corporation
 79 | before the merger or consolidation. The term includes
 80 | liabilities that, after the time of the merger or consolidation
 81 | for which the fair market value of total gross assets is
 82 | determined under section 4 of this act, were or are paid or
 83 | otherwise discharged, or committed to be paid or otherwise
 84 | discharged, by or on behalf of the corporation, or by a
 85 | successor of the corporation, or by or on behalf of a transferor
 86 | in connection with settlements, judgments, or other discharges
 87 | in this state or another jurisdiction.

88 | (5) "Transferor" means a corporation from which successor
 89 | asbestos-related liabilities are or were assumed or incurred.

90 | Section 3. Applicability.--

91 | (1) The limitations in section 4 apply to a corporation
 92 | that is a successor and became a successor before January 1,
 93 | 1972, or is any of that successor corporation's successors.

94 | (2) The limitations in section 4 do not apply to:

95 | (a) Workers' compensation benefits paid by or on behalf of
 96 | an employer to an employee under chapter 440, Florida Statutes,
 97 | or a comparable workers' compensation law of another
 98 | jurisdiction;

99 | (b) Any claim against a corporation that does not
 100 | constitute a successor asbestos-related liability;

101 | (c) An insurance corporation, as defined in section
 102 | 717.101, Florida Statutes; or

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

105 Section 4. Limitations on successor asbestos-related
106 liabilities.--

107 (1) Except as further limited in subsection (2), the
108 cumulative successor asbestos-related liabilities of a
109 corporation are limited to the fair market value of the total
110 gross assets of the transferor determined as of the time of the
111 merger or consolidation. The corporation does not have any
112 responsibility for successor asbestos-related liabilities in
113 excess of this limitation.

114 (2) If the transferor had assumed or incurred successor
115 asbestos-related liabilities in connection with a prior merger
116 or consolidation with a prior transferor, the fair market value
117 of the total assets of the prior transferor, determined as of
118 the time of the earlier merger or consolidation, shall be
119 substituted for the limitation set forth in subsection (1) for
120 purposes of determining the limitation of liability of a
121 corporation.

122 Section 5. Establishing fair market value of total gross
123 assets.--

124 (1) A corporation may establish the fair market value of
125 total gross assets for the purpose of the limitations under
126 section 4 of this act through any method reasonable under the
127 circumstances, including:

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

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

134 (2) Total gross assets include intangible assets.

135 (3) Total gross assets include the aggregate coverage
 136 under any applicable liability insurance that was issued to the
 137 transferor whose assets are being valued for purposes of this
 138 section, which insurance has been collected or is collectible to
 139 cover successor asbestos-related liabilities except compensation
 140 for liabilities arising from workers' exposure to asbestos
 141 solely during the course of their employment by the transferor.
 142 A settlement of a dispute concerning the insurance coverage
 143 entered into by a transferor or successor with the insurers of
 144 the transferor before the effective date of this act shall be
 145 determinative of the aggregate coverage of the liability
 146 insurance to be included in the calculation of the transferor's
 147 total gross assets.

148 Section 6. Adjustment.--

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

153 (a) The prime rate as listed in the first edition of the
 154 Wall Street Journal published for each calendar year since the
 155 merger or consolidation, unless the prime rate is not published
 156 in that edition of the Wall Street Journal, in which case any
 157 reasonable determination of the prime rate on the first day of
 158 the year may be used; and

159 (b) One percent.

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

161 (3) The adjustment of fair market value of total gross
 162 assets shall continue as provided under subsection (1) until the
 163 date the adjusted value is first exceeded by the cumulative
 164 amounts of successor asbestos-related liabilities paid or
 165 committed to be paid by or on behalf of the corporation or a
 166 predecessor, or by or on behalf of a transferor, after the time
 167 of the merger or consolidation for which the fair market value
 168 of total gross assets is determined.

169 (4) No adjustment of the fair market value of total gross
 170 assets shall be applied to any liability insurance otherwise
 171 included in the definition of total gross assets by subsection
 172 (3) of section 5.

173 Section 7. Scope.--The courts in this state shall apply,
 174 to the fullest extent permissible under the United States
 175 Constitution, this state's substantive law, including the
 176 limitation under this act, to the issue of successor asbestos-
 177 related liabilities. This act shall be construed liberally to
 178 accomplish its remedial purposes.

179 Section 8. If any provision of this act or its application
 180 to any person or circumstance is held invalid, the invalidity
 181 shall not affect other provisions or applications of this act
 182 which can be given effect without the invalid provision or
 183 application, and to this end the provisions of this act are
 184 severable.

185 Section 9. This act shall take effect upon becoming a law
 186 and shall apply to any civil action asserting an asbestos claim

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187 | in which the trial has not commenced as of the effective date of
188 | this act.