

CHAMBER ACTION

1 The Business Regulation Committee recommends the following:

2  
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.

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 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 company, as defined in section 717.101,  
 102 | Florida Statutes;

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

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106       (e) Any successor that, after a merger or consolidation,  
107 continued in the business of mining asbestos, in the business of  
108 selling or distributing asbestos fibers, or in the business of  
109 manufacturing, distributing, removing, or installing asbestos-  
110 containing products which were the same or substantially the  
111 same as those products previously manufactured, distributed,  
112 removed, or installed by the transferor.

113       Section 4. Limitations on successor asbestos-related  
114 liabilities.--

115       (1) Except as further limited in subsection (2), the  
116 cumulative successor asbestos-related liabilities of a  
117 corporation are limited to the fair market value of the total  
118 gross assets of the transferor determined as of the time of the  
119 merger or consolidation. The corporation does not have any  
120 responsibility for successor asbestos-related liabilities in  
121 excess of this limitation.

122       (2) If the transferor had assumed or incurred successor  
123 asbestos-related liabilities in connection with a prior merger  
124 or consolidation with a prior transferor, the fair market value  
125 of the total assets of the prior transferor, determined as of  
126 the time of the earlier merger or consolidation, shall be  
127 substituted for the limitation set forth in subsection (1) for  
128 purposes of determining the limitation of liability of a  
129 corporation.

130       Section 5. Establishing fair market value of total gross  
131 assets.--

132       (1) A corporation may establish the fair market value of  
133 total gross assets for the purpose of the limitations under

134 section 4 of this act through any method reasonable under the  
 135 circumstances, including:

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

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

142 (2) Total gross assets include intangible assets.

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

156 Section 6. Adjustment.--

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

161       (a) The prime rate as listed in the first edition of the  
 162 Wall Street Journal published for each calendar year since the  
 163 merger or consolidation, unless the prime rate is not published  
 164 in that edition of the Wall Street Journal, in which case any  
 165 reasonable determination of the prime rate on the first day of  
 166 the year may be used; and

167       (b) One percent.

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

169       (3) The adjustment of fair market value of total gross  
 170 assets shall continue as provided under subsection (1) until the  
 171 date the adjusted value is first exceeded by the cumulative  
 172 amounts of successor asbestos-related liabilities paid or  
 173 committed to be paid by or on behalf of the corporation or a  
 174 predecessor, or by or on behalf of a transferor, after the time  
 175 of the merger or consolidation for which the fair market value  
 176 of total gross assets is determined.

177       (4) No adjustment of the fair market value of total gross  
 178 assets shall be applied to any liability insurance otherwise  
 179 included in the definition of total gross assets by subsection  
 180 (3) of section 5.

181       Section 7. Scope.--The courts in this state shall apply,  
 182 to the fullest extent permissible under the United States  
 183 Constitution, this state's substantive law, including the  
 184 limitation under this act, to the issue of successor asbestos-  
 185 related liabilities. This act shall be construed liberally to  
 186 accomplish its remedial purposes.

187       Section 8. If any provision of this act or its application  
 188 to any person or circumstance is held invalid, the invalidity

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189 | shall not affect other provisions or applications of this act  
190 | which can be given effect without the invalid provision or  
191 | application, and to this end the provisions of this act are  
192 | severable.

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