

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

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Legislative findings and intent.--The
 25 Legislature finds that the number of asbestos-related claims has
 26 increased significantly in recent years and threatens the
 27 continued viability of a number of uniquely situated companies
 28 that have not ever manufactured, sold, or distributed asbestos

29 or asbestos products and are liable only as successor
30 corporations. This liability has created an overpowering public
31 necessity to provide an immediate, remedial, legislative
32 solution. The Legislature intends that the cumulative recovery
33 by all asbestos claimants from innocent successors be limited
34 and intends to simply change the form of asbestos claimants'
35 remedies without impairing their substantive rights and finds
36 that there are no alternative means to meet this public
37 necessity. The Legislature finds the public interest as a whole
38 is best served by providing relief to these innocent successors
39 so that they may remain viable and continue to contribute to
40 this state.

41 Section 2. Definitions.--

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

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

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

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

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

58 (2) "Corporation" means a corporation for profit,
59 including a domestic corporation organized under the laws of
60 this state or a foreign corporation organized under laws other
61 than the laws of this state.

62 (3) "Successor" means a corporation that assumes or
63 incurs, or has assumed or incurred, successor asbestos-related
64 liabilities.

65 (4) "Successor asbestos-related liabilities" means any
66 liabilities, whether known or unknown, asserted or unasserted,
67 absolute or contingent, accrued or unaccrued, liquidated or
68 unliquidated, or due or to become due, which are related in any
69 way to asbestos claims and were assumed or incurred by a
70 corporation as a result of or in connection with a merger or
71 consolidation, or the plan of merger or consolidation related to
72 the merger or consolidation, with or into another corporation,
73 or which are related in any way to asbestos claims based on the
74 exercise of control or the ownership of stock of the corporation
75 before the merger or consolidation. The term includes
76 liabilities that, after the time of the merger or consolidation
77 for which the fair market value of total gross assets is
78 determined under section 4 of this act, were or are paid or
79 otherwise discharged, or committed to be paid or otherwise
80 discharged, by or on behalf of the corporation, or by a
81 successor of the corporation, or by or on behalf of a transferor
82 in connection with settlements, judgments, or other discharges
83 in this state or another jurisdiction.

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

86 Section 3. Applicability.--

87 (1) The limitations in section 4 apply to a corporation
 88 that is a successor and became a successor before January 1,
 89 1972, or is any of that successor corporation's successors.

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

91 (a) Workers' compensation benefits paid by or on behalf of
 92 an employer to an employee under chapter 440, Florida Statutes,
 93 or a comparable workers' compensation law of another
 94 jurisdiction;

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

97 (c) An insurance company, as defined in section 717.101,
 98 Florida Statutes;

99 (d) Any obligations under the National Labor Relations
 100 Act, as amended, or under any collective bargaining agreement;
 101 or

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

109 Section 4. Limitations on successor asbestos-related
 110 liabilities.--

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

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

126 Section 5. Establishing fair market value of total gross
127 assets.--

128 (1) A corporation may establish the fair market value of
129 total gross assets for the purpose of the limitations under
130 section 4 of this act through any method reasonable under the
131 circumstances, including:

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

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

138 (2) Total gross assets include intangible assets.

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

152 Section 6. Adjustment.--

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

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

163 (b) One percent.

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

165 (3) The adjustment of fair market value of total gross
166 assets shall continue as provided under subsection (1) until the

167 date the adjusted value is first exceeded by the cumulative
168 amounts of successor asbestos-related liabilities paid or
169 committed to be paid by or on behalf of the corporation or a
170 predecessor, or by or on behalf of a transferor, after the time
171 of the merger or consolidation for which the fair market value
172 of total gross assets is determined.

173 (4) No adjustment of the fair market value of total gross
174 assets shall be applied to any liability insurance otherwise
175 included in the definition of total gross assets by subsection
176 (3) of section 5.

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

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

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