

Committee Substitute for Senate Bill No. 2228

An act relating to asbestos-related claims; providing legislative findings and intent; defining terms related to asbestos-related claims; providing that the limitations of liabilities in the act apply to a corporation that is a successor and became a successor before January 1, 1972; providing exceptions to the limitations of the act; providing that the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation; providing an exception; providing methods by which to establish fair market value of total gross assets; providing for the fair market value of total gross assets at the time of a merger or consolidation to increase annually; providing a methodology by which the fair market value of the assets is increased; requiring that the courts liberally construe the act; providing for severability; providing for applicability; providing an effective date.

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

Section 1. Legislative findings and intent.—The Legislature finds that the number of asbestos-related claims has increased significantly in recent years and threatens the continued viability of a number of uniquely situated companies that have not ever manufactured, sold, or distributed asbestos or asbestos products and are liable only as successor corporations. This liability has created an overpowering public necessity to provide an immediate, remedial, legislative solution. The Legislature intends that the cumulative recovery by all asbestos claimants from innocent successors be limited, and intends to simply change the form of asbestos claimants' remedies without impairing their substantive rights, and finds that there are no alternative means to meet this public necessity. The Legislature finds the public interest as a whole is best served by providing relief to these innocent successors so that they may remain viable and continue to contribute to this state.

Section 2. Definitions.—

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

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

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

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

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

(2) “Corporation” means a corporation for profit, including a domestic corporation organized under the laws of this state, or a foreign corporation organized under laws other than the laws of this state.

(3) “Successor” means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

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

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

Section 3. Applicability.—

(1) The limitations in section 4 of this act apply to a corporation that is a successor and became a successor before January 1, 1972, or is any of that successor corporation’s successors.

(2) The limitations in section 4 of this act do not apply to:

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

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

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

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

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

Section 4. Limitations on successor asbestos-related liabilities.—

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

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

Section 5. Establishing fair market value of total gross assets.—

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

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

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

(2) Total gross assets include intangible assets.

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

Section 6. Adjustment.—

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

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

(b) One percent.

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

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

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

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

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

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

Approved by the Governor June 20, 2005.

Filed in Office Secretary of State June 20, 2005.