

1 HB180
2 126794-1
3 By Representative Williams (J)
4 RFD: Commerce and Small Business
5 First Read: 08-MAR-11

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8 SYNOPSIS: Under existing law, when two corporations
9 merge or are consolidated, a successor or surviving
10 corporation may retain the liabilities of both
11 corporations, and may assume any asbestos-related
12 liabilities of merged corporations.

13 This bill would limit the liability of
14 successor corporations that have assumed
15 asbestos-related liabilities as the result of a
16 merger or consolidation to the fair market value of
17 the total gross assets of the merged or
18 consolidated corporation on the date of the merger
19 or consolidation.

20 This bill would provide the methods by which
21 to establish the fair market value of total gross
22 assets and would provide that the fair market value
23 of total gross assets at the time of a merger or
24 consolidation would increase annually.

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26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 Relating to asbestos-related claims; to limit the
4 liability of successor corporations that have assumed
5 asbestos-related liabilities to the fair market value of the
6 total gross assets of the merged or consolidated corporation
7 on the date of the merger or consolidation; to provide
8 exceptions to the limitations on damages in the act; to
9 provide methods by which to establish the fair market value of
10 total gross assets; to provide that the fair market value of
11 the total gross assets at the time of the merger or
12 consolidation would increase annually; to provide a
13 methodology by which the fair market value of the assets is
14 increased; and to provide that the provisions of the act would
15 not apply to any civil action asserting an asbestos claim in
16 which the trial has not commenced as of the effective date of
17 the act.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. For the purposes of this act, the
20 following words shall have the following meanings:

21 (1) ASBESTOS CLAIM. Any claim, wherever or whenever
22 made, for damages, losses, indemnification, contribution, or
23 other relief arising out of, based on, or in any way related
24 to asbestos, including:

25 a. The health effects of exposure to asbestos,
26 including any claim for:

27 1. Personal injury or death.

1 2. Mental or emotional injury.

2 3. Risk of disease or other injury.

3 4. The costs of medical monitoring or surveillance,
4 to the extent these claims are recognized under state law.

5 b. Any claim made by or on behalf of a person
6 exposed to asbestos, or a representative, spouse, parent,
7 child, or other relative of the person.

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

10 (2) CORPORATION. A corporation for profit, including
11 a domestic corporation organized under the laws of this state,
12 or a foreign corporation organized under laws other than the
13 laws of this state.

14 (3) SUCCESSOR. A corporation that assumes or incurs,
15 or has assumed or incurred, successor asbestos-related
16 liabilities.

17 (4) SUCCESSOR ASBESTOS-RELATED LIABILITIES. Any
18 liabilities, whether known or unknown, asserted or unasserted,
19 absolute or contingent, accrued or unaccrued, liquidated or
20 unliquidated, or due or to become due, which are related in
21 any way to asbestos claims and were assumed or incurred by a
22 corporation as a result of or in connection with a merger or
23 consolidation, or the plan of merger or consolidation related
24 to the merger or consolidation, with or into another
25 corporation, or which are related in any way to asbestos
26 claims based on the exercise of control or the ownership of
27 stock of the corporation before the merger or consolidation.

1 The term includes liabilities that, after the time of the
2 merger or consolidation for which the fair market value of
3 total gross assets is determined under Section 3 were or are
4 paid or otherwise discharged, or committed to be paid or
5 otherwise discharged, by or on behalf of the corporation, or
6 by a successor of the corporation, or by or on behalf of a
7 transferor, in connection with settlements, judgments, or
8 other discharges in this state or another jurisdiction.

9 (5) TRANSFEROR. A corporation from which successor
10 asbestos-related liabilities are or were assumed or incurred.

11 Section 2. (a) The limitations in Section 3 apply to
12 a corporation that is a successor and became a successor
13 before January 1, 1972, or is any of that successor
14 corporation's successors.

15 (b) The limitations in Section 3 do not apply to:

16 (1) Workers' compensation benefits paid by or on
17 behalf of an employer to an employee under the laws of this
18 state or a comparable workers' compensation law of another
19 jurisdiction.

20 (2) Any claim against a corporation that does not
21 constitute a successor asbestos-related liability.

22 (3) An insurer, as defined in Section 27-1-2, Code
23 of Alabama 1975.

24 (4) Any obligations under the National Labor
25 Relations Act, as amended, or under any collective bargaining
26 agreement.

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

9 Section 3. (a) Except as further limited in
10 subsection (b), the cumulative successor asbestos-related
11 liabilities of a corporation are limited to the fair market
12 value of the total gross assets of the transferor determined
13 as of the time of the merger or consolidation. The corporation
14 does not have any responsibility for successor
15 asbestos-related liabilities in excess of this limitation.

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

24 Section 4. (a) A corporation may establish the fair
25 market value of total gross assets for the purpose of the
26 limitations under Section 3 through any method reasonable
27 under the circumstances, including:

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

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

8 (b) Total gross assets include intangible assets.

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

22 Section 5. (a) Except as provided in subsections
23 (b), (c), and (d), the fair market value of total gross assets
24 at the time of a merger or consolidation shall increase
25 annually at a rate equal to the sum of:

26 (1) The prime rate as listed in the first edition of
27 the Wall Street Journal published for each calendar year since

1 the merger or consolidation, unless the prime rate is not
2 published in that edition of the Wall Street Journal, in which
3 case any reasonable determination of the prime rate on the
4 first day of the year may be used.

5 (2) One percent.

6 (b) The rate in subsection (a) may not be
7 compounded.

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

17 (d) No adjustment of the fair market value of total
18 gross assets shall be applied to any liability insurance
19 otherwise included in the definition of total gross assets by
20 subsection (c) of Section 4.

21 Section 6. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law and
24 shall apply to any civil action asserting an asbestos claim in
25 which the trial has not commenced as of the effective date of
26 this act.