
Judiciary Committee

HB 2507

Title: An act relating to limitations on asbestos-related liabilities relating to certain mergers or consolidations occurring before 1972.

Brief Description: Creating provisions relating to asbestos-related liabilities.

Sponsors: Representatives Kessler, Rodne, Kirby, Priest, Shea, Hunt, Warnick and Moeller.

Brief Summary of Bill

- Limits a successor corporation's liability for asbestos-related claims to an amount equal to the fair market value of the predecessor corporation's total gross assets; and
- Applies to successor corporations that assumed or incurred asbestos-related liabilities before January 1, 1972.

Hearing Date: 1/11/10

Staff: Trudes Tango (786-7384).

Background:

Under Washington's Business Corporation Act, when one or more corporations formally merge pursuant to statutory procedures, the surviving corporation has all the debts and liabilities of each predecessor corporation absorbed in the merger. Absent a merger, the general rule is that a corporation purchasing the assets of another corporation does not, by reason of the purchase of assets, become liable for the debts and liabilities of the selling corporation.

Recently, some states have adopted laws addressing successor asbestos-related liability. The American Legislative Exchange Council has drafted model legislation on successor asbestos-related liability. The model legislation limits the total financial liability of a successor corporation to an amount equal to what the predecessor's total gross assets would be worth today.

Summary of Bill:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A corporation that assumed or incurred asbestos-related liabilities before January 1, 1972 as a result of a merger or consolidation with another corporation has limited asbestos-related liability. The cumulative successor asbestos-related liability is limited to the fair market value of the total gross assets of the predecessor corporation.

The fair market value is determined at the time the corporations merged or consolidated and includes an annual adjustment based on the prime rate of each year after merger or consolidation, plus one percent. Once the limit is reached, the successor corporation does not have any responsibility for successor asbestos-related liabilities in excess of that limit.

The limitations do not apply to:

- (1) workers' compensation benefits;
- (2) claims that do not constitute successor asbestos-related liabilities;
- (3) insurers;
- (4) any obligation under the national labor relations act or under any collective bargaining agreement;
- (5) a successor that continued the business of mining asbestos, selling or distributing asbestos fibers, or manufacturing, distributing, removing, or installing asbestos-containing products that were the same or substantially the same as those of the predecessor corporation;
- (6) a contractual obligation existing as of the effective date of the act that was entered into with claimants and that resolves asbestos claims;
- (7) any claim made against the estate of a debtor, or a bankruptcy trust, in a bankruptcy proceeding commenced prior to April 1, 2003;
- (8) a successor asbestos-related liability arising from a common law claim for premises liability if the successor owned or controlled the premises after the merger or consolidation; and
- (9) any government claims brought under state model toxics control act or the federal superfund law.

Procedures are created to determine the fair market value of total gross assets. The annual adjustment of the fair market value of total gross assets continues until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities already paid or committed to be paid by or on behalf of the successor corporation or a predecessor.

Appropriation: None.

Fiscal Note: Requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.