
SENATE BILL 5804

State of Washington 60th Legislature 2007 Regular Session

By Senators Prentice, Poulsen, McCaslin, Murray, Hargrove, Roach, Carrell, Eide, Hewitt and Shin

Read first time 02/01/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to limitations on asbestos-related liabilities
2 relating to certain mergers or consolidations occurring before 1972;
3 adding a new chapter to Title 23 RCW; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the number of
6 asbestos-related claims has increased significantly in recent years and
7 threatens the continued viability of one or more uniquely situated
8 companies that have not ever manufactured, sold, or distributed
9 asbestos or asbestos products, and are liable only as successor
10 corporations. This liability has created an overpowering public
11 necessity to provide an immediate, remedial, legislative solution. The
12 legislature intends that the cumulative recovery by all asbestos
13 claimants from innocent successors be limited, and intends to simply
14 change the form of asbestos claimants' remedies without impairing their
15 substantive rights, and finds that there are no alternative means to
16 meet this public necessity. The legislature finds that public interest
17 as a whole is best served by providing relief to these innocent
18 successors, so that they may remain viable and continue to contribute
19 to this state.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

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

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

8 (i) Personal injury or death;

9 (ii) Mental or emotional injury;

10 (iii) Risk of disease or other injury; or

11 (iv) The costs of medical monitoring or surveillance, to the extent
12 such claims are recognized under state law;

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

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

18 (2) "Corporation" means a corporation for profit, including a
19 domestic corporation organized under the laws of this state, or a
20 foreign corporation organized under laws other than the laws of this
21 state.

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

24 (4) "Successor asbestos-related liabilities" means any liabilities,
25 whether known or unknown, asserted or unasserted, absolute or
26 contingent, accrued or unaccrued, liquidated or unliquidated, or due or
27 to become due, that are related in any way to asbestos claims, as
28 defined in this section, and that were assumed or incurred by a
29 corporation as a result of or in connection with a merger or
30 consolidation, or the plan of merger or consolidation related to the
31 merger or consolidation, with or into another corporation or that are
32 related in any way to asbestos claims based on the exercise of control
33 or the ownership of stock of the corporation before the merger or
34 consolidation. The term includes liabilities that, after the time of
35 the merger or consolidation for which the fair market value of total
36 gross assets is determined under section 5 of this act, were or are
37 paid or otherwise discharged, or committed to be paid or otherwise
38 discharged, by or on behalf of the corporation, or by a successor of

1 the corporation, or by or on behalf of a transferor, in connection with
2 settlements, judgments, or other discharges in this state or another
3 jurisdiction.

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

6 NEW SECTION. Sec. 3. (1) The limitations in section 4 of this act
7 shall apply to a domestic corporation or a foreign corporation that is
8 a successor, which became a successor before January 1, 1972, or which
9 is any of that successor corporation's successors.

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

11 (a) Workers' compensation benefits paid by or on behalf of an
12 employer to an employee under this state's workers' compensation act or
13 a comparable workers' compensation law of another jurisdiction;

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

16 (c) An insurance corporation, as that term is used in Title 48 RCW;

17 (d) Any obligations under the national labor relations act (29
18 U.S.C. Sec. 151 et seq.), as amended, or under any collective
19 bargaining agreement; or

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

27 NEW SECTION. Sec. 4. (1) Except as further limited in subsection
28 (2) of this section, the cumulative successor asbestos-related
29 liabilities of a corporation are limited to the fair market value of
30 the total gross assets of the transferor determined as of the time of
31 the merger or consolidation. The corporation does not have any
32 responsibility for successor asbestos-related liabilities in excess of
33 this limitation.

34 (2) If the transferor had assumed or incurred successor asbestos-
35 related liabilities in connection with a prior merger or consolidation
36 with a prior transferor, then the fair market value of the total assets

1 of the prior transferor, determined as of the time of such earlier
2 merger or consolidation, shall be substituted for the limitation set
3 forth in subsection (1) of this section for purposes of determining the
4 limitation of liability of a corporation.

5 NEW SECTION. **Sec. 5.** (1) A corporation may establish the fair
6 market value of total gross assets for the purpose of the limitations
7 under section 4 of this act through any method reasonable under the
8 circumstances, including: (a) By reference to the going-concern value
9 of the assets or to the purchase price attributable to or paid for the
10 assets in an arm's-length transaction; or (b) in the absence of other
11 readily available information from which fair market value can be
12 determined, by reference to the value of the assets recorded on a
13 balance sheet.

14 (2) Total gross assets include intangible assets.

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

27 NEW SECTION. **Sec. 6.** (1) Except as provided in subsections (2),
28 (3), and (4) of this section, the fair market value of total gross
29 assets at the time of a merger or consolidation increases annually at
30 a rate equal to the sum of: (a) The prime rate as listed in the first
31 edition of the Wall Street Journal published for each calendar year
32 since the merger or consolidation, unless the prime rate is not
33 published in that edition of the Wall Street Journal, in which case any
34 reasonable determination of the prime rate on the first day of the year
35 may be used; and (b) one percent.

36 (2) The rate in subsection (1) of this section is not compounded.

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

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

11 NEW SECTION. **Sec. 7.** This act may be known and cited as the
12 successor asbestos-related liability fairness act.

13 NEW SECTION. **Sec. 8.** This act applies to all causes of action
14 commenced on or after the effective date of this section, regardless of
15 when the action arose. To this extent, this act applies retroactively,
16 but in all other respects it applies prospectively.

17 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and takes effect
20 immediately.

21 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act constitute
22 a new chapter in Title 23 RCW.

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