

SB3056



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB3056

Introduced 1/20/2006, by Sen. Rickey R. Hendon - Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

New Act

Creates the Successor Asbestos-Related Liability Fairness Act. Limits the cumulative successor asbestos-related liabilities of a corporation to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. Provides that a corporation is not responsible for successor asbestos-related liabilities in excess of that limitation. Provides guidelines for establishing the fair market value of the total gross assets for the purpose of the liability limitation.

LRB094 19196 LCT 54739 b

A BILL FOR

1 AN ACT concerning liability.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Successor Asbestos-Related Liability Fairness Act.

6 Section 5. Definitions. As used in this Act:

7 "Asbestos claim" means any claim, wherever or whenever
8 made, for damages, losses, indemnification, contribution, or
9 other relief arising out of, based on, or in any way related to
10 asbestos, including:

11 (1) the health effects of exposure to asbestos,
12 including any claim for:

13 (A) personal injury or death;

14 (B) mental or emotional injury;

15 (C) risk of disease or other injury; or

16 (D) the costs of medical monitoring or
17 surveillance, to the extent that the claims are
18 recognized under State law;

19 (2) any claim made by or on behalf of any person
20 exposed to asbestos, or a representative, spouse, parent,
21 child, or other relative of the person; and

22 (3) any claim for damage or loss caused by the
23 installation, presence, or removal of asbestos.

24 "Corporation" means a domestic corporation organized under
25 the laws of this State or a foreign corporation organized under
26 laws other than the laws of this State.

27 "Successor" means a corporation that assumes or incurs, or
28 has assumed or incurred, successor asbestos-related
29 liabilities.

30 "Successor asbestos-related liabilities" means any
31 liabilities, whether known or unknown, asserted or unasserted,
32 absolute or contingent, accrued or unaccrued, liquidated or

1 unliquidated, or due or to become due, that are related in any
2 way to asbestos claims as defined by this Act and that were
3 assumed or incurred by a corporation as a result of or in
4 connection with a merger or consolidation, or the plan of
5 merger or consolidation related to the merger or consolidation,
6 with or into another corporation or that are related in any way
7 to asbestos claims based on the exercise of control or the
8 ownership of stock of the corporation before the merger or
9 consolidation. The term includes liabilities that, after the
10 time of the merger or consolidation for which the fair market
11 value of total gross assets is determined under Section 20,
12 were or are paid or otherwise discharged, or committed to be
13 paid or otherwise discharged, by or on behalf of the
14 corporation, or by a successor of the corporation, or by or on
15 behalf of a transferor, in connection with settlements,
16 judgments, or other discharges in this State or another
17 jurisdiction.

18 "Transferor" means a corporation from which successor
19 asbestos-related liabilities are or were assumed or incurred.

20 Section 10. Limitations; applicability.

21 (a) The limitations in Section 15 shall apply to a domestic
22 corporation or a foreign corporation: (i) that has had a
23 certificate of authority to transact business in this State or
24 that has done business in this State; and (ii) that is a
25 successor which became a successor prior to January 1, 1972 or
26 that is any of that successor corporation's successors.

27 (b) The limitations in Section 15 shall not apply to:

28 (1) workers' compensation benefits paid by or on behalf
29 of an employer to an employee under the Workers'
30 Compensation Act or a comparable workers' compensation law
31 of another jurisdiction;

32 (2) any claim against a corporation that does not
33 constitute a successor asbestos-related liability;

34 (3) an insurance or surety company, as those terms are
35 used in the Illinois Insurance Code;

1 (4) any obligations under the National Labor Relations
2 Act (29.U.S.C. Section 151 et seq.), as amended, or under
3 any collective bargaining agreement; or

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

12 Section 15. Limitations on liabilities.

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

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

28 Section 20. Establishing fair market value of total gross
29 assets.

30 (a) A corporation may establish the fair market value of
31 total gross assets for the purpose of the limitations under
32 Section 15 through any method reasonable under the
33 circumstances, including:

34 (1) by reference to the going concern value of the

1 assets or to the purchase price attributable to or paid for
2 the assets in an arm's-length transaction; or

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

7 (b) Total gross assets include intangible assets.

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

21 Section 25. Adjustment.

22 (a) Except as provided in subsections (b), (c), and (d) of
23 this Section, the fair market value of total gross assets at
24 the time of a merger or consolidation increases annually at a
25 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
28 since the merger or consolidation, unless the prime rate is
29 not published in that edition of the Wall Street Journal,
30 in which case any reasonable determination of the prime
31 rate on the first day of the year may be used; and

32 (2) 1%.

33 (b) The rate in subsection (a) of this Section is not
34 compounded.

35 (c) The adjustment of fair market value of total gross

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

9 (d) No adjustment of the fair market value of total gross
10 assets shall be applied to any liability insurance otherwise
11 included in the definition of total gross assets by subsection
12 (c) of Section 20.

13 Section 30. Scope of Act. The courts in this State shall
14 apply, to the fullest extent permissible under the United
15 States Constitution, this State's substantive law, including
16 the limitation under this Act, to the issue of successor
17 asbestos-related liabilities.

18 Section 35. Applicability; pending claims. This Act
19 applies to all asbestos claims filed on or after its effective
20 date and to all pending asbestos claims in which trial has not
21 commenced as of its effective date.