

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

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ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

(1) ASBESTOS CLAIM. 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:

1           a. The health effects of exposure to asbestos,  
2 including any claim for:

3           1. Personal injury or death.

4           2. Mental or emotional injury.

5           3. Risk of disease or other injury.

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

8           b. Any claim made by or on behalf of a person  
9 exposed to asbestos, or a representative, spouse, parent,  
10 child, or other relative of the person.

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

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

17           (3) SUCCESSOR. A corporation that assumes or incurs,  
18 or has assumed or incurred, successor asbestos-related  
19 liabilities.

20           (4) SUCCESSOR ASBESTOS-RELATED LIABILITIES. Any  
21 liabilities, whether known or unknown, asserted or unasserted,  
22 absolute or contingent, accrued or unaccrued, liquidated or  
23 unliquidated, or due or to become due, which are related in  
24 any way to asbestos claims and were assumed or incurred by a  
25 corporation as a result of or in connection with a merger or

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

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

16 Section 2. (a) The limitations in Section 3 apply to  
17 a corporation that is a successor and became a successor  
18 before January 1, 1972, or is any of that successor  
19 corporation's successors.

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

21 (1) Workers' compensation benefits paid by or on  
22 behalf of an employer to an employee under the laws of this  
23 state or a comparable workers' compensation law of another  
24 jurisdiction.

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

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

5           (4) Any obligations under the National Labor  
6 Relations Act, as amended, or under any collective bargaining  
7 agreement.

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

16           Section 3. (a) Except as further limited in  
17 subsection (b), the cumulative successor asbestos-related  
18 liabilities of a corporation are limited to the fair market  
19 value of the total gross assets of the transferor determined  
20 as of the time of the merger or consolidation. The corporation  
21 does not have any responsibility for successor  
22 asbestos-related liabilities in excess of this limitation.

23           (b) If the transferor had assumed or incurred  
24 successor asbestos-related liabilities in connection with a  
25 prior merger or consolidation with a prior transferor, the

1 fair market value of the total assets of the prior transferor,  
2 determined as of the time of the earlier merger or  
3 consolidation, shall be substituted for the limitation set  
4 forth in subsection (a) for purposes of determining the  
5 limitation of liability of a corporation.

6 Section 4. (a) A corporation may establish the fair  
7 market value of total gross assets for the purpose of the  
8 limitations under Section 3 through any method reasonable  
9 under the circumstances, including:

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

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

17 (b) Total gross assets include intangible assets.

18 (c) Total gross assets include the aggregate  
19 coverage under any applicable liability insurance that was  
20 issued to the transferor whose assets are being valued for  
21 purposes of this section, which insurance has been collected  
22 or is collectible to cover successor asbestos-related  
23 liabilities except compensation for liabilities arising from  
24 workers' exposure to asbestos solely during the course of  
25 their employment by the transferor. A settlement of a dispute

1 concerning the insurance coverage entered into by a transferor  
 2 or successor with the insurers of the transferor before the  
 3 effective date of this act shall be determinative of the  
 4 aggregate coverage of the liability insurance to be included  
 5 in the calculation of the transferor's total gross assets.

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

10 (1) The prime rate as listed in the first edition of  
 11 the Wall Street Journal published for each calendar year since  
 12 the merger or consolidation, unless the prime rate is not  
 13 published in that edition of the Wall Street Journal, in which  
 14 case any reasonable determination of the prime rate on the  
 15 first day of the year may be used.

16 (2) One percent.

17 (b) The rate in subsection (a) may not be  
 18 compounded.

19 (c) The adjustment of fair market value of total  
 20 gross assets shall continue as provided under subsection (a)  
 21 until the date the adjusted value is first exceeded by the  
 22 cumulative amounts of successor asbestos-related liabilities  
 23 paid or committed to be paid by or on behalf of the  
 24 corporation or a predecessor, or by or on behalf of a  
 25 transferor, after the time of the merger or consolidation for

1       which the fair market value of total gross assets is  
2       determined.

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

7               Section 6. This act shall become effective on the  
8       first day of the third month following its passage and  
9       approval by the Governor, or its otherwise becoming law and  
10       shall apply to any civil action asserting an asbestos claim in  
11       which the trial has not commenced as of the effective date of  
12       this act.



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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 21-APR-11.

Greg Pappas  
Clerk

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Senate

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02-JUN-11

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Passed