CHAPTER 81

Successor Asbestos‑Related Liability Fairness Act

Editor's Note

2006 Act No. 280, Section 3, provides as follows:

"The provisions of this act are intended to be construed liberally to accomplish its remedial purposes and the courts of the State are directed to apply this state's substantive law, including limitations pursuant to the provisions of this act, to the fullest extent permissible pursuant to the United States Constitution."

**SECTION 15‑81‑110.** Citation of act.

 This act may be cited as the "Successor Asbestos‑Related Liability Fairness Act".

HISTORY: 2006 Act No. 280, Section 1, eff May 23, 2006, applicable to civil actions asserting an asbestos claim filed on or after that date.

**SECTION 15‑81‑120.** Definitions.

 For the purposes of this chapter:

 (1) "Asbestos claim" means a claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or related to asbestos, including:

 (a) the health effects of exposure to asbestos, including a claim for:

 (i) personal injury or death;

 (ii) mental or emotional injury;

 (iii) risk of disease or other injury; or

 (iv) the costs of medical monitoring or surveillance to the extent these claims are recognized pursuant to state law;

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

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

 (2) "Corporation" means a corporation for profit, including a domestic corporation organized pursuant to the laws of this State, or a foreign corporation organized pursuant to laws other than the laws of this State.

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

 (4) "Successor asbestos‑related liabilities" means liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related to an asbestos claim and were assumed or incurred by a corporation as a result of, or in connection with, a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation, or which are related to an asbestos claim based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined pursuant to Section 15‑81‑140, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this State or another jurisdiction.

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

HISTORY: 2006 Act No. 280, Section 1, eff May 23, 2006, applicable to civil actions asserting an asbestos claim filed on or after that date.

**SECTION 15‑81‑130.** Applicability of limitations granted successor.

 (A) The limitations of Section 15‑81‑140 apply to a corporation that is a successor and became a successor before January 1, 1972, or is a successor of that corporation's successors.

 (B) The limitations of Section 15‑81‑140 do not apply to:

 (1) workers' compensation benefits paid by or on behalf of an employer to an employee pursuant to Title 42, or a comparable workers' compensation law of another jurisdiction;

 (2) a claim against a corporation that does not constitute a successor asbestos‑related liability;

 (3) an insurance company, as defined in Chapter 1, Title 38;

 (4) an obligation pursuant to the National Labor Relations Act, as amended, or pursuant to a collective bargaining agreement; or

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

HISTORY: 2006 Act No. 280, Section 1, eff May 23, 2006, applicable to civil actions asserting an asbestos claim filed on or after that date.

**SECTION 15‑81‑140.** Limitation of cumulative successor asbestos‑related liabilities of corporation.

 (A) Except as further limited in subsection (B), the cumulative successor asbestos‑related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation is not responsible for successor asbestos‑related liabilities in excess of this limitation.

 (B) If the transferor assumed or incurred successor asbestos‑related liabilities in connection with a prior merger or consolidation with a prior transferor, the fair market value of the total assets of the prior transferor, determined as of the time of the earlier merger or consolidation, will be substituted for the limitation provided in subsection (A) for purposes of determining the limitation of liability of a corporation.

HISTORY: 2006 Act No. 280, Section 1, eff May 23, 2006, applicable to civil actions asserting an asbestos claim filed on or after that date.

**SECTION 15‑81‑150.** Establishing fair market value of total gross assets.

 (A) A corporation may establish the fair market value of total gross assets for the purpose of the limitations pursuant to Section 15‑81‑140 through a method reasonable under the circumstances, including:

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

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

 (B) Total gross assets include intangible assets.

 (C) Total gross assets include the aggregate coverage pursuant to applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, which insurance has been collected or is collectible to cover successor asbestos‑related liabilities except compensation for liabilities arising from a worker's exposure to asbestos solely during the course of his employment by the transferor. A settlement of a dispute concerning the insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this act is determinative of the aggregate coverage of liability insurance to be included in the calculation of the transferor's total gross assets.

HISTORY: 2006 Act No. 280, Section 1, eff May 23, 2006, applicable to civil actions asserting an asbestos claim filed on or after that date.

**SECTION 15‑81‑160.** Annual rate of adjustment of fair market value.

 (A) Except as provided in subsections (B), (C), and (D), the fair market value of total gross assets at the time of a merger or consolidation will increase annually at a rate equal to the sum of:

 (1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case a reasonable determination of the prime rate on the first day of the year may be used; and

 (2) one percent.

 (B) The rate provided in subsection (A) may not be compounded.

 (C) The adjustment of fair market value of total gross assets continues as provided pursuant to the provisions of subsection (A) until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos‑related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

 (D) No adjustment of the fair market value of total gross assets may be applied to liability insurance otherwise included in the definition of total gross assets by Section 15‑81‑150(C).

HISTORY: 2006 Act No. 280, Section 1, eff May 23, 2006, applicable to all civil actions asserting an asbestos claim filed on or after that date.