



SPONSOR: Rep. Valihura & Rep. Smith;
Rep. DiPinto; Sen. Still

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL NO. 452

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATED TO CAUSES OF ACTION AND SUCCESSOR LIABILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 37, Title 10 of the Delaware Code by inserting a new "Subchapter III" to read as follows:

"Subchapter III. Asbestos Liability.

§ 3735. Definitions.

For the purposes of this subchapter:

- (1) 'Asbestos claim' means any claim filed in a Delaware court or filed in a federal court seated in Delaware, 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:
 - (a) the health effects of exposure to asbestos, including any 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 that the claims are recognized under State law;
 - (b) any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child or other relative of the person; and
 - (c) any claim for damage or loss caused by the installation, presence or removal of asbestos.

- 17 (2) 'Corporation' means a domestic corporation organized under the laws of this State or a foreign
18 corporation organized under laws other than the laws of this State, and the application of this statute shall
19 not be dependent upon nor derived from the state of incorporation.
- 20 (3) 'Successor' means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-
21 related liabilities.
- 22 (4) 'Successor asbestos-related liabilities' means any liabilities, whether known or unknown, asserted or
23 unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become
24 due, that are related in any way to asbestos claims as defined by this Act and that were assumed or
25 incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of
26 merger or consolidation related to the merger or consolidation, with or into another corporation or that
27 are related in any way to asbestos claims based on the exercise of control or the ownership of stock of
28 the corporation before the merger or consolidation. The term includes liabilities that, after the time of
29 the merger or consolidation for which the fair market value of total gross assets is determined under §
30 3738, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or
31 on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in
32 connection with settlements, judgments or other discharges in this State or another jurisdiction.
- 33 (5) 'Transferor' means a corporation from which successor asbestos-related liabilities are or were assumed
34 or incurred.

35 § 3736. Limitations; applicability.

- 36 (a) The limitations in § 3737 shall apply to a domestic corporation or a foreign corporation that is a
37 successor and became a successor prior to January 1, 1972 or that is any of that successor corporation's
38 successors.
- 39 (b) The limitations in § 3737 shall not apply to:
- 40 (1) workers' compensation benefits paid by or on behalf of an employer to an employee under the
41 Worker's Compensation Act or a comparable workers' compensation law of another
42 jurisdiction;
- 43 (2) any claim against a corporation that does not constitute a successor asbestos-related liability;
- 44 (3) an insurer, as that term is defined in Chapter 1 of Title 18 of the Delaware Insurance Code;

- 45 (4) any obligations under the National Labor Relations Act (29. U.S.C. § 151 et seq.), as amended,
46 or under any collective bargaining agreement; or
- 47 (5) a successor that, after a merger or consolidation, continued in the business of mining asbestos,
48 in the business of selling or distributing asbestos fibers, or in the business of manufacturing,
49 distributing, removing or installing asbestos-containing products that were the same or
50 substantially the same as those products previously manufactured, distributed, removed or
51 installed by the transferor.

52 § 3737. Limitations on liabilities.

- 53 (a) Except as further limited in subsection (b) of this section, the cumulative successor asbestos-related
54 liabilities of a corporation shall be limited to the fair market value of the total gross assets of the
55 transferor determined as of the time of the merger or consolidation. The corporation shall not have any
56 liability or responsibility for successor asbestos-related liabilities in excess of this limitation.
- 57 (b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior
58 merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior
59 transferor, determined as of the time of the earlier merger or consolidation, shall be substituted for the
60 limitation set forth in subsection (a) of this section for purposes of determining the limitation of liability
61 of a corporation.

62 § 3738. Establishing fair market value of total gross assets.

- 63 (a) A corporation may establish the fair market value of total gross assets for the purpose of the limitations
64 under § 3737 through any method reasonable under the circumstances, including:
- 65 (1) by reference to the going concern value of the assets or to the purchase price attributable to or
66 paid for the assets in an arm's-length transaction; or
- 67 (2) in the absence of other readily available information from which fair market value can be
68 determined, by reference to the value of the assets recorded on a balance sheet.
- 69 (b) Total gross assets shall include intangible assets.
- 70 (c) Total gross assets shall include the aggregate coverage under any applicable liability insurance that was
71 issued to the transferor whose assets are being valued for purposes of this section and which insurance
72 has been collected or is collectable to cover successor asbestos-related liabilities, except compensation
73 for liabilities arising from workers' exposure to asbestos solely during the course of their 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 enactment of this Act shall be determinative of the aggregate coverage of a liability insurance to be included in the calculation of the transferor's total gross assets.

§ 3739. Adjustment.

- (a) Except as provided in subsections (b), (c) and (d) of this section, the fair market value of total gross assets at the time of a merger or consolidation shall 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 any reasonable determination of the prime rate on the first day of the year may be used; and
 - (2) one percent (1%).
- (b) The rate in subsection (a) of this section shall not be compounded.
- (c) The adjustment of fair market value of total gross assets shall continue as provided under subsection (a) of this section 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 shall be applied to any liability insurance otherwise included in the definition of total gross assets by subsection (c) of § 3738.”.

Section 2. The courts of this State shall apply the provisions of this Act to the fullest extent permissible under the United States Constitution, the Constitution of the State of Delaware and the State's substantive law, including the limitations under this Act, to the issue of successor asbestos-related liabilities.

Section 3. This Act shall apply to all asbestos claims filed in a Delaware court or filed in federal court seated in Delaware and this Act shall apply to all such asbestos claims filed on or after the effective date of this Act and to all pending asbestos claims filed in such court in which trial has not commenced as of its effective date of this Act.

Section 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application and to that end the provisions of this Act are declared to be severable.

SYNOPSIS

This Bill limits the cumulative successor asbestos-related liabilities of a corporation, in certain situations, to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The Bill's application is limited to those cases where the merger or consolidation occurred prior to January 1, 1972 and only applies where the successor corporation did not produce, sell or distribute asbestos products after the merger or consolidation. The provisions of this Bill only apply to cases filed in Delaware courts, including federal courts seated in Delaware.