

Successor Asbestos-Related Liability (FL)

Successor liability generally provides that when a predecessor merges with another corporation, the successor can be held liable for the torts of the dissolved predecessor. This Act places a principled and reasonable limit upon the wholly vicarious asbestos liability of a successor corporation following a merger. The bill limits the liability of successor corporations that have assumed asbestos-related liabilities as the result of a merger or consolidation that occurred prior to January 1, 1972. The limitation on successor liability only applies to successor corporations that have not continued in the asbestos business of the merged or consolidated corporation. The liability of the eligible successor corporations is limited to the adjusted fair market value of the total gross assets of the merged or consolidated corporation on the date of the merger or consolidation. The law permits the determination of the fair market value of a merged or consolidated corporation's total gross assets through any reasonable method. Once the available funds have been exhausted, the successor corporation has no further liability. The law takes effect upon becoming a law and applies to actions asserting an asbestos claim in which the trial has not commenced as of the effective date.

Submitted as:

Florida

Chapter 269 - 2005

Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “An Act Relating To Asbestos-Related
2 Claims.”

3
4 Section 2. [*Legislative Findings and Intent.*] The [Legislature] finds that the number of
5 asbestos-related claims has increased significantly in recent years and threatens the continued
6 viability of a number of uniquely situated companies that have not ever manufactured, sold, or
7 distributed asbestos or asbestos products and are liable only as successor corporations. This
8 liability has created an overpowering public necessity to provide an immediate, remedial,
9 legislative solution. The [Legislature] intends that the cumulative recovery by all asbestos
10 claimants from innocent successors be limited, and intends to simply change the form of asbestos
11 claimants’ remedies without impairing their substantive rights, and finds that there are no
12 alternative means to meet this public necessity. The [Legislature] finds the public interest as a
13 whole is best served by providing relief to these innocent successors so that they may remain
14 viable and continue to contribute to this state.

15
16 Section 3. [*Definitions.*] As used in this Act:

17 (1) “Asbestos claim” means any claim, wherever or whenever made, for damages, losses,
18 indemnification, contribution, or other relief arising out of, based on, or in any way related to
19 asbestos, including:

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

- 21 1. Personal injury or death;
- 22 2. Mental or emotional injury;
- 23 3. Risk of disease or other injury; or

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

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

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

30 (2) "Corporation" means a corporation for profit, including a domestic corporation
31 organized under the laws of this state, or a foreign corporation organized under laws other than
32 the laws of this state.

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

35 (4) "Successor asbestos-related liabilities" means any liabilities, whether known or
36 unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or
37 unliquidated, or due or to become due, which are related in any way to asbestos claims and were
38 assumed or incurred by a corporation as a result of or in connection with a merger or
39 consolidation, or the plan of merger or consolidation related to the merger or consolidation, with
40 or into another corporation, or which are related in any way to asbestos claims based on the
41 exercise of control or the ownership of stock of the corporation before the merger or
42 consolidation. The term includes liabilities that, after the time of the merger or consolidation for
43 which the fair market value of total gross assets is determined under section 6 of this Act, were or
44 are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on
45 behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor,
46 in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

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

49
50 Section 4. [*Applicability.*]

51 (1) The limitations in section 5 of this Act apply to a corporation that is a successor and
52 became a successor before [January 1, 1972], or is any of that successor corporation's successors.

53 (2) The limitations do not apply to:

54 (a) Workers' Compensation benefits paid by or on behalf of an employer to an
55 employee under [insert citation], or a comparable Workers' Compensation law of another
56 jurisdiction;

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

59 (c) An insurance company, as defined in [insert citation];

60 (d) Any obligations under the National Labor Relations Act, as amended, or under
61 any collective bargaining agreement; or

62 (e) A successor that, after a merger or consolidation, continued in the business of
63 mining asbestos, in the business of selling or distributing asbestos fibers, or in the business of
64 manufacturing, distributing, removing, or installing asbestos-containing products that were the
65 same or substantially the same as those products previously manufactured, distributed, removed,
66 or installed by the transferor.

67
68 Section 5. [*Limitations on Successor Asbestos-Related Liabilities.*]

69 (1) Except as further limited in subsection (2), the cumulative successor asbestos-related
70 liabilities of a corporation are limited to the fair market value of the total gross assets of the
71 transferor determined as of the time of the merger or consolidation. The corporation does not
72 have any responsibility for successor asbestos-related liabilities in excess of this limitation.

73 (2) If the transferor had assumed or incurred successor asbestos-related liabilities in
74 connection with a prior merger or consolidation with a prior transferor, the fair market value of
75 the total assets of the prior transferor, determined as of the time of the earlier merger or
76 consolidation, shall be substituted for the limitation set forth in subsection (1) for purposes of
77 determining the limitation of liability of a corporation.

78
79 Section 6. [*Establishing Fair Market Value of Total Gross Assets.*]

80 (1) A corporation may establish the fair market value of total gross assets for the purpose
81 of the limitations under section 5 of this Act through any method reasonable under the
82 circumstances, including:

83 (a) By reference to the going concern value of the assets or to the purchase price
84 attributable to or paid for the assets in an arm's-length transaction; or

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

87 (2) Total gross assets include intangible assets.

88 (3) Total gross assets include the aggregate coverage under any applicable liability
89 insurance that was issued to the transferor whose assets are being valued for purposes of this
90 section, which insurance has been collected or is collectible to cover successor asbestos-related
91 liabilities except compensation for liabilities arising from workers' exposure to asbestos solely
92 during the course of their employment by the transferor. A settlement of a dispute concerning the
93 insurance coverage entered into by a transferor or successor with the insurers of the transferor
94 before the effective date of this Act shall be determinative of the aggregate coverage of the
95 liability insurance to be included in the calculation of the transferor's total gross assets.

96
97 Section 7. [*Adjustment.*]

98 (1) Except as provided in the limitations in this Act, the fair market value of total gross
99 assets at the time of a merger or consolidation shall increase annually at a rate equal to the sum
100 of:

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

105 (b) [One percent].

106 (2) The rate in subsection (1) may not be compounded.

107 (3) The adjustment of fair market value of total gross assets shall continue as provided
108 under subsection (1) until the date the adjusted value is first exceeded by the cumulative amounts
109 of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the
110 corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or
111 consolidation for which the fair market value of total gross assets is determined.

112 (4) No adjustment of the fair market value of total gross assets shall be applied to any
113 liability insurance otherwise included in the definition of total gross assets by subsection (3) of
114 section 6 of this Act.

115
116 Section 8. [*Scope.*] The courts in this state shall apply, to the fullest extent permissible
117 under the United States Constitution, this state's substantive law, including the limitation under
118 this act, to the issue of successor asbestos-related liabilities. This Act shall be construed liberally
119 to accomplish its remedial purposes.

120
121 Section 9. [*Severability.*] [Insert severability clause.]
122

123 Section 10. [*Repealer.*] [Insert repealer clause.]

124

125 Section 11. [*Effective Date.*] [Insert effective date.]