SENATE BILL REPORT
SB 5804

As of February 28, 2007

Title: An act relating to limitations on asbestos-related liabilities relating to certain mergers or consolidations occurring before 1972.

Brief Description: Creating provisions relating to asbestos liability.

Sponsors: Senators Prentice, Poulsen, McCaslin, Murray, Hargrove, Roach, Carrell, Eide, Hewitt and Shin.

Brief History:
Committee Activity: Judiciary: 2/27/07.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7405)

Background: Under Washington's Business Corporation Act, when one or more corporations formally merge, the surviving, or successor, corporation is subject to the debts and liabilities of each predecessor corporation absorbed in the merger. However, absent a merger, the general rule follows that a corporation purchasing the assets of another corporation does not, by reason of the purchase of assets, become liable for the debts and liabilities of the selling, or predecessor, corporation.

The increased number of asbestos-related claims in Washington State threaten successor companies uniquely situated in that they have never manufactured, sold, or distributed asbestos or asbestos products and are liable strictly as successor corporations. Since the 1970s, thousands of asbestos-related injury claims have been filed in courts across the nation. Recently, a few states have adopted laws addressing a successor corporation's liability for asbestos-related injuries caused by the predecessor corporation's products. The American Legislative Exchange Council has drafted model legislation regarding successor asbestos-related liability. The model legislation limits the total financial liability of a successor corporation to an amount equal to the predecessor's total gross assets.

Summary of Bill: A corporation that assumed or incurred asbestos-related liabilities due to a merger or consolidation with a predecessor corporation on or before January 1, 1972, has limited asbestos-related liabilities. The limited liability does not apply if the successor corporation, after the merger or consolidation, continued in the business of mining, selling, distributing, removing, or installing asbestos-containing products which were substantially the same as the predecessor's products.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the predecessor corporation's total gross assets. The fair market value is determined at the time the corporations merged or consolidated and includes an annual adjustment based on the prime rate of each year after merger or consolidation, plus one percent. Once the limit is reached, the successor corporation does not have any responsibility for successor asbestos-related liabilities in excess of that limit.

A corporation may establish the fair market value of total gross assets through any method reasonable under the circumstances. The annual adjustment of the fair market value of total gross assets continues until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities already paid or committed to be paid by or on behalf of the successor corporation or a predecessor.

If the predecessor corporation had assumed or incurred successor asbestos-related liabilities in connection with a prior merger with a prior predecessor, the fair market value of the total gross assets of the prior predecessor must be the limitation of liability of the current successor corporation.

The limitation on liability does not apply to: (1) workers compensation benefits paid under the state workers' compensation act; (2) claims against a corporation that are not asbestos-related claims; (3) insurance corporations; and (4) obligations under the National Labor Relations Act or under any collective bargaining agreement. The provisions of the bill apply to all causes of action commenced on or after the effective date of the act, regardless of when the action arose.

"Successor asbestos-related liabilities" includes liabilities that, after the merger or consolidation, were paid by the predecessor or successor in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

Appropriation: None.

Fiscal Note: Requested on February 21, 2007.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: Crown Cork and Seal (Crown) manufactures and distributes cans, bottles and caps. In the 1960's, Crown merged with Mundet, a company that at one time manufactured asbestos. Crown never manufactured, stored, or installed asbestos products. In 1971, OSHA was enacted and that was when it became widely recognized that asbestos was dangerous and prompted asbestos regulations. If Crown had known, at the time of the merger, what was established by OSHA in 1971, the merger may not have ever taken place. Since that time, Crown has been liable for, due to the merger, damages caused by Mundet's involvement in asbestos.

The financial future of Crown is threatened by the continued asbestos litigation. There are thousands of employees and retirees of Crown in Washington. Crown has been unable to update its facilities and may not be able to continue to compete with like companies because of the amount of money spent on liability payments. Employees and retirees of the company

are concerned about retirement, pensions, and healthcare. Crown has already lost big contracts, such as Coca-cola. When is enough, enough? What is equity and what is justice? Crown is paying for its predecessor's mistakes even though Crown was unaware of the consequences at the time of purchase. If ignorance is a cause for liability, then we are facing a whole other issue in this state.

CON: Asbestos has had devastating effects on the citizens of Washington State. Washington is ranked seventh in the nation of asbestos related deaths.

Mundet was a thermal insulation product, widely used in places such as Puget Sound Naval Shipyards, exposing a significant amount of citizens to asbestos. There are three major points of reference relating to when Crown should have known about the adverse health effects caused by asbestos, prior to the merger in 1966. There was an editorial article written in a 1949 edition of JAMA, a medical journal, establishing that asbestos caused lung cancer. In 1962, an asbestos worker filed a worker's compensation claim with Mundet contending that he suffered from an asbestos related occupation disease. In 1965, the New York Academy of Sciences published a study stating that there was no question, whatsoever, in the medical community that asbestos caused diseases such as cancer. These were all published prior to the merger.

To say that one must choose between maintaining jobs in Washington and compensating victims is false. In its 2003 annual report, Crown reported that its present and expected future liabilities lies between 239 and 406 million dollars. Crown has 6 billion dollars in annual sales. Crown also reported that the claims are not expected to have a material adverse effect on the company. Therefore, to place a cap on liabilities would only hurt the victims.

OTHER: There is concern that this bill would have a broad reaching range, exempting those in the construction industry from liability. We would like to change the language to reflect that concern.

Persons Testifying: PRO: Barry Mesher, lawyer for Crown Cork and Seal; Mike Ryherd, Teamsters 117.

CON: Matt Bergman, lawyer; Victor Hite, victim; Larry Shannon, WSTLA.

OTHER: Pete Kmet, Department of Ecology.