

# SENATE BILL REPORT

## SB 5964

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As Reported by Senate Committee On:  
Labor, Commerce & Consumer Protection, February 24, 2009

**Title:** An act relating to asbestos-related liabilities and consumer and worker injuries.

**Brief Description:** Concerning asbestos-related liabilities and consumer and worker injuries.

**Sponsors:** Senators McDermott, Hargrove, Tom and Shin.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/23/09, 2/24/09 [DPS, DNP].

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 5964 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

**Minority Report:** Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; Honeyford and King.

**Staff:** Alison Mendiola (786-7483)

**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.

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. 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.

Under the Restatement (Second) of Torts §388, a manufacturer has a duty to warn of the hazards involved in the use of the product that are or should be known to the manufacturer.

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*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 State Supreme Court recently ruled that a manufacturer does not have an obligation to warn of the dangers of another manufacturer's product. *Simonetta v. Viad Corp.*, No. 80076-6, 2008 WL 5175068 (Dec. 11, 2008) see also; *Braaten v. Saberhagen Holdings*, No. 80251-3, 2008 WL 5175083 (Dec. 11, 2008). Although the Court of Appeals previously held that when a product requires the use of another product and the two together cause a release of hazardous substance, the manufacturer has a duty to warn about the inherent dangers. *Simonetta v. Viad Corporation*, 137 Wn. App. 15 (2007), *linked with Braaten v. Saberhagen Holdings*, 137 Wn. App. 32 (2007).

**Summary of Bill (Recommended Substitute):** 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. The limitation of successor liability does not apply to the Model Toxic Controls Act of the federal superfund law.

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 1 percent. Once the limit is reached, the successor corporation does not have any responsibility for successor asbestos-related liabilities in excess of that limit.

When a product requires the use of asbestos or an asbestos-containing substance for the product to function as designed, or when a manufacturer should reasonably anticipate the use of asbestos, or an asbestos-containing substance with its product for the product to properly function, and the product and asbestos or asbestos-containing substance together create an unreasonable risk or harm to the user, the manufacturer of the product has a duty to warn the user of the risks of harm involved in the use of asbestos or the asbestos-containing substance in its product.

This Act applies to all causes of action filed before December 11, 2008, and to all causes of action filed on or after the effective date of this Act.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute):** Clarifies that the limitation of successor-liability does not apply to the Model Toxic Controls Act of the federal superfund law.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill:** PRO: Washington ranks seventh in the country for asbestos-related deaths because of shipyard employment throughout the last 30 years, as much of the exposure was on marine equipment with no way for employees to avoid the asbestos exposure. In many instances you actually needed asbestos to make the product work or couldn't do normal maintenance without disturbing the asbestos. This bill is good for both Washington State, due to positive fiscal impact for the Department of Labor and Industries, and for the asbestos victims. Capping liability for successor companies is needed because many companies purchased former-asbestos producing companies without any knowledge and the result has been devastating. Companies who never made or sold asbestos or a product that required the use of asbestos are on the hook for millions of dollars. One local company is an example, and it provides family wage jobs. It has had 300,000 asbestos claims and has made \$600 million in payments for a company it bought in 1963. Other states have passed successor-liability laws. Section 5 addresses a December 2008 ruling of the State Supreme Court which basically overturned well-established case law that has existed since the 1960's.

CON: All other courts have ruled the same as Washington. The December rulings in the companion cases were both 6-3 decisions, and well-reasoned. The court of appeals decision below was unique in expanding asbestos products liability to companies whose products did not contain asbestos. The Supreme Court was clear that neither manufacturer had asbestos in their products or required the use of it. Washington would become a haven for litigation which would create a burden for the courts. Existing law provides compensation for victims, specifically where the company has gone bankrupt. Section 5 establishes a rule in Washington unlike any other state. What about companies like Weyerhaeuser who manufacture lumber? Also, the retroactivity clause is an issue.

**Persons Testifying:** PRO: Senator McDermott, prime sponsor; Mathew Bergman, Bergman & Frockt; Arnold Franks, Shawn Ondall, citizens; Mike Ryherd, Teamsters; Dan Joanis, Crown Cork & Seal; Larry Shannon, Washington State Association for Justice.

CON: Paul Lawrence, Washington Liability Reform Coalition; Kris Tefft, Association of Washington Business; Troy Nichols, National Federation of Independent Business; Kristen Sawin, Weyerhaeuser.