
SUBSTITUTE SENATE BILL 5964

State of Washington 61st Legislature 2009 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators McDermott, Hargrove, Tom, and Shin)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to asbestos-related liabilities and consumer and
2 worker injuries; adding a new chapter to Title 23 RCW; and declaring an
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Asbestos" means any type of asbestos including, without
8 limitation, chrysotile, amosite, crocidolite, tremolite asbestos,
9 anthophyllite asbestos, actinolite asbestos, and any of these minerals
10 that have been chemically treated or altered.

11 (2) "Asbestos claim" means any claim, wherever or whenever made,
12 for damages, losses, indemnification, contribution, or other relief
13 arising out of, based on, or in any way related to asbestos, including:

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

- 16 (i) Personal injury or death;
- 17 (ii) Mental or emotional injury;
- 18 (iii) Risk of disease or other injury; or

1 (iv) The costs of medical monitoring or surveillance, to the extent
2 such claims are recognized under state law;

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

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

8 (3) "Corporation" means a corporation for profit, including a
9 domestic corporation organized under the laws of this state or a
10 foreign corporation organized under laws other than the laws of this
11 state.

12 (4) "Successor" means a corporation that assumes or incurs, or has
13 assumed or incurred, successor asbestos-related liabilities before
14 January 1, 1972, or a successor of that successor.

15 (5) "Successor asbestos-related liabilities" means any liabilities,
16 whether known or unknown, asserted or unasserted, absolute or
17 contingent, accrued or unaccrued, liquidated or unliquidated, or due or
18 to become due, that are related in any way to asbestos claims, and that
19 were assumed or incurred by a corporation as a result of or in
20 connection with a merger or consolidation, or the plan of merger or
21 consolidation related to the merger or consolidation, with or into
22 another corporation or that are related in any way to asbestos claims
23 based on the exercise of control or the ownership of stock of the
24 corporation before the merger or consolidation. "Successor asbestos-
25 related liabilities" includes liabilities that, after the time of the
26 merger or consolidation for which the fair market value of total gross
27 assets is determined under section 3 of this act, are or were paid or
28 otherwise discharged, or committed to be paid or otherwise discharged,
29 by or on behalf of the corporation, by a successor of the corporation,
30 or by or on behalf of a transferor, in connection with settlements,
31 judgments, or other discharges in this state or another jurisdiction.

32 (6) "Transferor" means a corporation from which successor asbestos-
33 related liabilities are or were assumed or incurred.

34 NEW SECTION. **Sec. 2.** (1) Except as further limited in subsection
35 (2) of this section, the cumulative successor asbestos-related
36 liabilities of a corporation are limited to the fair market value of
37 the total gross assets of the transferor determined as of the time of

1 the merger or consolidation. The corporation does not have any
2 responsibility for successor asbestos-related liabilities in excess of
3 this limitation.

4 (2) If the transferor had assumed or incurred successor asbestos-
5 related liabilities in connection with a prior merger or consolidation
6 with a prior transferor, the fair market value of the total assets of
7 the prior transferor, determined as of the time of the earlier merger
8 or consolidation, must be substituted for the limitation set forth in
9 subsection (1) of this section for the purposes of determining the
10 limitation of liability of a corporation.

11 (3) The limitations in this section apply to a domestic corporation
12 or a foreign corporation that is a successor.

13 (4) The limitations in this section do not apply to:

14 (a) Workers' compensation benefits paid by or on behalf of an
15 employer to an employee under this state's workers' compensation act or
16 a comparable workers' compensation law of another jurisdiction;

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

19 (c) An insurer, as defined in RCW 48.01.050;

20 (d) Any obligations under the national labor relations act (29
21 U.S.C. Sec. 151 et seq.), as amended, or under any collective
22 bargaining agreement;

23 (e) A successor that, after a merger or consolidation, continued in
24 the business of mining asbestos, selling or distributing asbestos
25 fibers, or manufacturing, distributing, removing, or installing
26 asbestos-containing products that were the same or substantially the
27 same as those products previously manufactured, distributed, removed,
28 or installed by the transferor;

29 (f) A contractual obligation existing as of the effective date of
30 this section that was entered into with claimants or potential
31 claimants or their counsel and that resolves asbestos claims or
32 potential asbestos claims;

33 (g) Any claim made against the estate of a debtor in a bankruptcy
34 proceeding commenced prior to April 1, 2003, under the United States
35 bankruptcy code (11 U.S.C. Sec. 101 et seq.) by or against the debtor,
36 or against a bankruptcy trust established under 11 U.S.C. Sec. 524(g)
37 or similar provisions of the United States code in such a bankruptcy
38 proceeding commenced prior to April 1, 2003;

1 (h) A successor asbestos-related liability arising from a common
2 law claim for premises liability, but only if the successor owned or
3 controlled the premise or premises at issue after the merger or
4 consolidation; or

5 (i) Any liability under chapter 70.105D RCW, or under the federal
6 superfund law, 42 U.S.C. Sec. 9601 et seq.

7 NEW SECTION. **Sec. 3.** (1) A corporation may establish the fair
8 market value of total gross assets for the purpose of the limitations
9 under section 2 of this act through any method reasonable under the
10 circumstances, including: (a) By reference to the going-concern value
11 of the assets or to the purchase price attributable to or paid for the
12 assets in an arm's-length transaction; or (b) in the absence of other
13 readily available information from which fair market value can be
14 determined, by reference to the value of the assets recorded on a
15 balance sheet.

16 (2) Total gross assets include (a) intangible assets and (b) the
17 aggregate coverage under any applicable liability insurance that was
18 issued to the transferor whose assets are being valued for purposes of
19 this section and which insurance has been collected or is collectable
20 to cover successor asbestos-related liabilities, except compensation
21 for liabilities arising from workers' exposure to asbestos solely
22 during the course of their employment by the transferor. A settlement
23 of a dispute concerning the liability insurance coverage entered into
24 by a transferor or successor with the insurers of the transferor before
25 the effective date of this section determines the aggregate coverage of
26 the liability insurance to be included in the calculation of the
27 transferor's total gross assets.

28 (3) The fair market value of total gross assets must reflect no
29 deduction for any liabilities arising from any asbestos claim.

30 NEW SECTION. **Sec. 4.** (1) Except as provided in this section, the
31 fair market value of total gross assets at the time of a merger or
32 consolidation increases annually at a rate equal to the sum of: (a)
33 The prime rate as listed in the first edition of the Wall Street
34 Journal published for each calendar year since the merger or
35 consolidation, unless the prime rate is not published in that edition

1 of the Wall Street Journal, in which case any reasonable determination
2 of the prime rate on the first day of the year may be used; and (b) one
3 percent.

4 (2) The rate in subsection (1) of this section is not compounded.

5 (3) The adjustment of fair market value of total gross assets
6 continues as provided under subsection (1) of this section until the
7 date the adjusted value is first exceeded by the cumulative amounts of
8 successor asbestos-related liabilities paid or committed to be paid by
9 or on behalf of the corporation or a predecessor, or by or on behalf of
10 a transferor, after the time of the merger or consolidation for which
11 the fair market value of total gross assets is determined.

12 (4) An adjustment of the fair market value of total gross assets
13 may not be applied to any liability insurance otherwise included in the
14 definition of total gross assets under section 3(2) of this act.

15 NEW SECTION. **Sec. 5.** When a product requires the use of asbestos
16 or an asbestos-containing substance for the product to function as
17 designed or when a manufacturer should reasonably anticipate the use of
18 asbestos or an asbestos-containing substance with its product for the
19 product to properly function, and the product and the asbestos or
20 asbestos-containing substance together create an unreasonable risk of
21 harm to the user, the manufacturer of the product has a nondelegable
22 duty to warn the user of the risks of harm involved in the use of
23 asbestos or the asbestos-containing substance in its product.

24 NEW SECTION. **Sec. 6.** This act is remedial and retroactive, and
25 applies to all causes of action filed before December 11, 2008, and to
26 all causes of action filed on or after the effective date of this
27 section.

28 NEW SECTION. **Sec. 7.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

3 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
4 a new chapter in Title 23 RCW.

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