

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 261
94TH GENERAL ASSEMBLY

Reported from the Committee on Insurance Policy March 13, 2007 with recommendation that House Committee Substitute for House Bill No. 261 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0989L.04C

AN ACT

To amend chapter 537, RSMo, by adding thereto seven new sections relating to limitations of asbestos liabilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto seven new sections, to be
2 known as sections 537.920, 537.923, 537.926, 537.929, 537.932, 537.935, and 537.938, to read
3 as follows:

537.920. Sections 537.920 to 537.938 shall be known and may be cited as the
2 **"Missouri Successor Asbestos-Related Liability Fairness Act".**

537.923. The following terms shall mean:

- 2 (1) "Asbestos claim", any claim, wherever or whenever made, for damages, losses,
3 indemnification, contribution, or other relief arising out of, based on, or in any way related
4 to asbestos, including:
- 5 (a) The health effects of exposure to asbestos, including a claim for:
 - 6 a. Personal injury or death;
 - 7 b. Mental or emotional injury;
 - 8 c. Risk of disease or other injury; or
 - 9 d. The costs of medical monitoring or surveillance, to the extent such claims are
10 recognized under state law;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

13 (c) Any claim for damage or loss caused by the installation, presence, or removal
14 of asbestos;

15 (2) "Corporation", a corporation for profit, including a domestic corporation
16 organized under the laws of this state or a foreign corporation organized under laws other
17 than the laws of this state;

18 (3) "Successor", a corporation that assumes or incurs or has assumed or incurred
19 successor asbestos-related liabilities;

20 (4) "Successor asbestos-related liabilities", any liability, whether known or
21 unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated
22 or unliquidated, or due or to become due, which are related in any way to asbestos claims
23 and were assumed or incurred by a corporation as a result of or in connection with a
24 merger or consolidation or the plan of merger or consolidation related to the merger or
25 consolidation with or into another corporation or which are related in any way to asbestos
26 claims based on the exercise of control or the ownership of stock of the corporation before
27 the merger or consolidation. The term shall include liabilities that, after the time of the
28 merger or consolidation for which the fair market value of total gross assets is determined
29 under section 537.929, are or were paid or otherwise discharged or committed to be paid
30 or otherwise discharged, by or on behalf of the corporation or by a successor of the
31 corporation or by or on behalf of a transferor in connection with settlements, judgments,
32 or other discharges in this state or in another jurisdiction;

33 (5) "Transferor", a corporation from which successor asbestos-related liabilities
34 are or were assumed or incurred.

537.926. 1. The limitations in section 537.929 shall apply to any corporation that
2 is a successor and became a successor before January 1, 1972, or is any of that successor
3 corporation's successors.

4 2. The limitations of section 537.929 shall not apply to:

5 (1) Workers' compensation benefits paid by or on behalf of an employer to an
6 employee under the provisions of chapter 287, RSMo, or a comparable workers'
7 compensation law of another jurisdiction;

8 (2) Any claim against a corporation that does not constitute a successor asbestos-
9 related liability;

10 (3) Any obligation under the National Labor Relations Act, 29 U.S.C. Section 151,
11 et seq., as amended, or under any collective bargaining agreement; or

12 (4) A successor that after a merger or consolidation continued in the business of
13 mining asbestos, in the business of selling or distributing asbestos fibers, or in the business
14 of manufacturing, distributing, removing, or installing asbestos-containing products that
15 were the same or substantially the same as those products previously manufactured,
16 distributed, removed, or installed by the transferor.

537.929. 1. Except as further limited in subsection 2 of this section, the cumulative
2 successor asbestos-related liabilities of a corporation are limited to the fair market value
3 of the total gross assets of the transferor determined as of the time of the merger or
4 consolidation. The corporation does not have responsibility for successor asbestos-related
5 liabilities in excess of this limitation.

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

537.932. 1. A corporation may establish the fair market value of total gross assets
2 for the purpose of the limitations under section 537.929 through any method reasonable
3 under the circumstances, including:

4 (1) By reference to the going concern value of the assets or to the purchase price
5 attributable to or paid for the assets in an arms-length transaction; or

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

9 **2.** Total gross assets include intangible assets.

10 **3.** To the extent total gross assets include any liability insurance that was issued to
11 the transferor whose assets are being valued for purposes of this section, the applicability,
12 terms, conditions and limits of such insurance shall not be affected by this statute, nor shall
13 this statute otherwise affect the rights and obligations of an insurer, transferor or successor
14 under any insurance contract and/or any related agreements, including, without limitation,
15 preenactment settlements resolving coverage-related disputes, and the rights of an insurer
16 to seek payment for applicable deductibles, retrospective premiums or self-insured
17 retentions or to seek contribution from a successor for uninsured or self-insured periods
18 or periods where insurance is uncollectible or otherwise unavailable.

537.935. 1. Except as provided in subsections 2 to 4 of this section, the fair market
2 value of total gross assets at the time of the merger or consolidation shall increase annually
3 at a rate equal to the sum of:

4 **(1) The prime rate as listed in the first edition of the Wall Street Journal published**
5 **for each calendar year since the merger or consolidation, unless the prime rate is not**
6 **published in that edition of the Wall Street Journal, in which case any reasonable**
7 **determination of the prime rate on the first day of the year may be used; and**

8 **(2) One percent.**

9 **2. The rate found in subsection 1 of this section shall not be compounded.**

10 **3. The adjustment of the fair market value of total gross assets shall continue as**
11 **provided in subsection 1 of this section until the date the adjusted value is first exceeded**
12 **by the cumulative amounts of successor asbestos-related liabilities paid or committed to be**
13 **paid by or on behalf of the corporation or a predecessor or by or on behalf of a transferor**
14 **after the time of the merger or consolidation for which the fair market value of total gross**
15 **assets is determined.**

16 **4. No adjustment of the fair market value of total gross assets shall be applied to**
17 **any liability insurance that may be included in the definition of total gross assets by**
18 **subsection 3 of section 537.932.**

537.938. 1. The courts of this state shall construe the provisions of sections 537.920
2 **to 537.938 liberally and the provisions of these sections which are procedural in nature**
3 **shall be applied retroactively, however, any provisions of these sections which would affect**
4 **a vested right shall only be applied prospectively.**

5 **2. Sections 537.920 to 537.938 shall apply to all asbestos claims filed on or after the**
6 **effective date of sections 537.920 to 537.938. Sections 537.920 to 537.938 shall also apply**
7 **to any pending asbestos claims in which trial has not commenced as the effective date of**
8 **sections 537.920 to 537.938.**

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