

FIRST REGULAR SESSION

HOUSE BILL NO. 261

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES YATES (Sponsor) AND PRATT (Co-sponsor).

Read 1st time January 8, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0989L.03I

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
2 be known as sections 537.920, 537.923, 537.926, 537.929, 537.932, 537.935, and 537.938, to
3 read 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;**

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**

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.

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) An insurer, as that term is defined under section 375.1152, RSMo;

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

13 (5) A successor that after a merger or acquisition continued in the business of
14 mining asbestos, in the business of selling or distributing asbestos fibers, or in the business

15 of manufacturing, distributing, removing, or installing asbestos-containing products that
16 were the same or substantially the same as those products previously manufactured,
17 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 the responsibility for successor asbestos-
5 related liabilities in excess of this limitation.

6 2. If the transferor had assumed or incurred asbestos-related or liabilities in
7 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. Total gross assets include the aggregate coverage under any applicable liability
11 insurance that was issued to the transferor whose assets are being valued for purposes of
12 this section, which insurance has been collected or is collectible to cover successor asbestos-
13 related liabilities except compensation for liabilities arising from workers' exposure to
14 asbestos solely during the course of their employment by the transferor. A settlement of
15 a dispute concerning the insurance coverage entered into by a transferor or successor with
16 the insurers of the transferor before the effective date of sections 537.920 to 537.938 shall
17 be determinative of the aggregate coverage of the liability insurance to be included in the
18 calculation of the transferor's total gross assets.

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, unless the prime rate is not published in that

6 **edition of the Wall Street Journal, in which case any reasonable determination of the prime**
7 **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 otherwise 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 apply to the fullest extent permissible
2 **under the United States Constitution, this state's substantive law, including the limitation**
3 **under sections 537.920 to 537.938, to the issue of successor asbestos-related liabilities.**
4 **Sections 537.920 to 537.938 shall be construed liberally to accomplish its remedial purpose.**

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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