

Amend Amendment No. 3 by Nixon (beginning on page 471, amendment packet) by adding a new item:

Amend CSHB 4 on page 46, line 13, by striking ARTICLE 9 and substituting a new ARTICLE 9 to read as follows:

ARTICLE 9. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO
CERTAIN MERGERS OR CONSOLIDATIONS

SECTION 9.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 149 to read as follows:

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING
TO CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. In this chapter:

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

(A) property damage caused by the installation, presence, or removal of asbestos;

(B) the health effects of exposure to asbestos, including any claim for:

(i) personal injury or death;

(ii) mental or emotional injury;

(iii) risk of disease or other injury; or

(iv) the costs of medical monitoring or surveillance; and

(C) any claim made by or on behalf of any person exposed to asbestos or any representative, spouse, parent, child, or other relative of the person.

(2) "Corporation" means a corporation for profit, including:

(A) a domestic business corporation organized under the laws of this state; or

(B) a foreign corporation organized under laws other than the laws of this state that has a certificate of authority to transact business in this state or is doing business in this state.

(3) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted,

absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Section 149.004, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

(4) "Transferor" means a corporation from which successor asbestos-related liabilities are assumed or incurred.

Sec. 149.002. APPLICABILITY. (a) The limitation in Section 149.003 applies to a merger or consolidation effected under the laws of this state or another jurisdiction.

(b) The limitation in Section 149.003 does not apply to:

(1) workers' compensation benefits paid by or on behalf of an employer to an employee under the Texas Workers' Compensation Act, Subtitle A, Title 5, Labor Code, or comparable workers' compensation law of another jurisdiction;

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

(3) an insurance corporation, as that term is used in the Insurance Code; or

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

Sec. 149.003. LIMITATION ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. (a) Except as provided by Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or

consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the prior transferor, determined as of the time of the earlier merger or consolidation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (a) A corporation may establish the fair market value of total gross assets for the purpose of the limitation under Section 149.003 through any method reasonable under the circumstances, including:

(1) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

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

(b) Total gross assets include intangible assets.

Sec. 149.006. ADJUSTMENT. (a) The fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

(1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) one percent.

(b) The rate in Subsection (a) is not compounded.

(c) The adjustment of fair market value of total gross assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

Sec. 149.007. SCOPE OF CHAPTER. The courts in this state

shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

SECTION 9.02. Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all asbestos claims, including existing asbestos claims, and all litigation, including existing litigation, in the courts of this state, without regard to whether a suit was commenced before, on, or after the effective date of this article.