

By: Duncan

S.B. No. 1723

A BILL TO BE ENTITLED

AN ACT

relating to successor liability in asbestos claims.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Limitations in civil actions of liabilities relating to certain mergers or consolidations (a) Limitation on successor asbestos-related liabilities.--

(1) Except as further limited in paragraph (2), the cumulative successor asbestos-related liabilities of a corporation shall be limited to the fair market value of the total assets of the transferor determined as of the time of the merger or consolidation, and such corporation shall have no responsibility for successor asbestos-related liabilities in excess of such limitation.

(2) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in paragraph (1) for purposes of determining the limitation of liability of a corporation.

(b) Fair market value of total assets.--

(1) A corporation may establish the fair market value of total assets through any method reasonable under the

1 circumstances, including by reference to the going concern value of  
2 such assets or to the purchase price attributable to or paid for  
3 such assets in an arm's length transaction, or, in the absence of  
4 other readily available information from which fair market value  
5 can be determined, by reference to the value of such assets recorded  
6 on a balance sheet. Total assets shall include intangible assets. A  
7 showing by the corporation of a reasonable determination of the  
8 fair market value of total assets shall be prima facie evidence of  
9 their fair market value.

10 (2) Once a reasonable determination of the fair market  
11 value of total assets has been thus established by a corporation, a  
12 claimant disputing that determination of value shall then have the  
13 burden of establishing a different fair market value of such  
14 assets.

15 (3) For the purpose of adjusting the limitations set  
16 forth in subsection (a) to account for the passage of time, the fair  
17 market value of total assets at the time of a merger or  
18 consolidation shall be increased annually until the date on which  
19 such adjusted fair market value is first exceeded by the cumulative  
20 amounts paid or committed to be paid by or on behalf of the  
21 corporation, or by or on behalf of a transferor, after the time of  
22 the merger or consolidation as to which the fair market value of  
23 total assets is determined for purposes of subsection (a) in  
24 connection with settlements, judgments or other discharges of the  
25 successor asbestos-related liabilities. The annual increase shall  
26 be at the rate equal to the prime rate as listed in the first edition  
27 of the *Wall Street Journal* published for each calendar year since

1 such merger or consolidation, plus 1%, not compounded.

2 (c) Application.--

3 (1) The limitations set forth in subsection (a) shall  
4 apply to mergers or consolidations effected under the laws of this  
5 State or another jurisdiction.

6 (2) The limitations set forth in subsection (a) shall  
7 not apply to workers' compensation benefits paid by or on behalf of  
8 an employer to an employee pursuant to the Texas Workers'  
9 Compensation Act, Texas Labor Code Sec. 401.001 et. seq., or  
10 comparable workers' compensation law of another jurisdiction.

11 (3) The limitations set forth in subsection (a) shall  
12 not apply to any claim against a corporation that does not  
13 constitute a successor asbestos-related liability.

14 (4) This section shall not apply to an insurance  
15 corporation, as used in the Texas Insurance Code.

16 (5) The limitations set forth in subsection (a) shall  
17 not apply to any obligations arising under the National Labor  
18 Relations Act, 49 Stat. 449, 29 U.S.C. Sec. 151 et seq., or under  
19 any collective bargaining agreement.

20 (6) This Act shall be applicable to all cases in the  
21 courts of this State. To the fullest extent permissible under the  
22 United States Constitution, courts in this State shall apply this  
23 State's substantive law, including the limitations imposed by this  
24 Act, to the issue of successor asbestos-related liabilities of a  
25 corporation.

26 (7) The limitations set forth in subsection (a) shall  
27 apply to all asbestos claims, including existing asbestos claims,

1 and all litigation, including existing litigation without regard to  
2 whether a suit was commenced before, on or after the effective date  
3 of this Act, and shall apply to successors of a corporation to which  
4 this section applies.

5 (d) Definitions.--As used in this section, the following  
6 words and phrases shall have the meanings given to them in this  
7 subsection:

8 "Asbestos claim." Any claim, wherever or whenever made, for  
9 damages, losses, indemnification, contribution or other relief  
10 arising out of, based on or in any way related to asbestos,  
11 including property damage caused by the installation, presence or  
12 removal of asbestos, the health effects of exposure to asbestos,  
13 including any claim for personal injury, death, mental or emotional  
14 injury, risk of disease or other injury or the costs of medical  
15 monitoring or surveillance. The term shall also include any claim  
16 made by or on behalf of any person exposed to asbestos or any  
17 representative, spouse, parent, child or other relative of any such  
18 person.

19 "Successor asbestos-related liabilities." Any liabilities,  
20 whether known or unknown, asserted or unasserted, absolute or  
21 contingent, accrued or unaccrued, liquidated or unliquidated or due  
22 or to become due, related in any way to asbestos claims, that were  
23 assumed or incurred by a corporation as a result of or in connection  
24 with a merger or consolidation, or the plan of merger or  
25 consolidation related thereto, with or into another corporation  
26 effected under the laws of this State or another jurisdiction or  
27 which are related in any way to asbestos claims based on the

1 exercise of control or the ownership of stock of such corporation  
2 prior to such merger or consolidation. The term shall also include  
3 liabilities which, after the time of the merger or consolidation as  
4 to which the fair market value of total assets is determined for  
5 purposes of subsection (a), were or are paid or otherwise  
6 discharged, or committed to be paid or otherwise discharged, by or  
7 on behalf of the corporation, or by or on behalf of a transferor, in  
8 connection with settlements, judgments or other discharges in this  
9 State or another jurisdiction.

10 "Transferor." A corporation from which successor  
11 asbestos-related liabilities are assumed or incurred.

12 "Corporation." A corporation for profit, including a  
13 domestic business corporation organized under the laws of this  
14 State or a foreign corporation organized under laws other than the  
15 laws of this State but that has a certificate of authority to  
16 transact business in this State or is doing business in this State.

17 Section 2. This Act shall take effect immediately if it  
18 receives a vote of two-thirds of all members elected to each house,  
19 as provided by section 39, article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2003.