

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 522

By: Anderson

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6 AS INTRODUCED

7 An Act relating to torts; defining terms; stating
8 limitations to certain provisions; clarifying
9 asbestos-related liabilities for certain
10 corporations; establishing acceptable methods of
valuation of certain assets under specified
circumstances; providing for codification; and
providing an effective date.

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13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 5.9 of Title 76, unless there is
16 created a duplication in numbering, reads as follows:

17 A. As used in this section:

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

22 a. property damage caused by the installation, presence,
23 or removal of asbestos,
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1 b. the health effects of exposure to asbestos, including
2 any claim for:

3 (1) personal injury or death,

4 (2) mental or emotional injury,

5 (3) risk of disease or other injury, or

6 (4) the costs of medical monitoring or surveillance,

7 and

8 c. any claim made by or on behalf of any person exposed
9 to asbestos, or a representative, spouse, parent,
10 child, or other relative of the person;

11 2. "Corporation" means a corporation for profit, including:

12 a. a domestic corporation organized under the laws of
13 this state, or

14 b. a foreign corporation organized under laws other than
15 the laws of this state;

16 3. "Successor asbestos-related liabilities" means any
17 liabilities, whether known or unknown, asserted or unasserted,
18 absolute or contingent, accrued or unaccrued, liquidated or
19 unliquidated, or due or to become due, that are related in any way
20 to asbestos claims that were assumed or incurred by a corporation as
21 a result of or in connection with a merger or consolidation, or the
22 plan of merger or consolidation related to the merger or
23 consolidation, with or into another corporation or that are related
24 in any way to asbestos claims based on the exercise of control or

1 the ownership of stock of the corporation before the merger or
2 consolidation. The term includes liabilities that, after the time
3 of the merger or consolidation for which the fair market value of
4 total gross assets is determined under subsection D of this section,
5 were or are paid or otherwise discharged, or committed to be paid or
6 otherwise discharged, by or on behalf of the corporation, or by a
7 successor 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 4. "Successor" means a corporation that assumes or incurs, or
11 has assumed or incurred, successor asbestos-related liabilities; and

12 5. "Transferor" means a corporation from which successor
13 asbestos-related liabilities are or were assumed or incurred.

14 B. 1. The limitations in subsection C of this section shall
15 apply to a domestic corporation or a foreign corporation that has
16 had a certificate of authority to transact business in this state or
17 has done business in this state and that is a successor or which is
18 a successor of a successor corporation, but in the latter case only
19 to the extent of the limitation of liability applied under paragraph
20 2 of subsection C of this section and subject to the limitations
21 found in this section.

22 2. The limitations in subsection C of this section shall not
23 apply to:

24 a. workers' compensation benefits,

- 1 b. any claim against a corporation that does not
2 constitute a successor asbestos-related liability,
3 c. an insurance company,
4 d. any obligations under the National Labor Relations
5 Act, 29 U.S.C., Section 151 et seq., as amended, or
6 under any collective bargaining agreement,
7 e. a successor that, after a merger or consolidation,
8 continued in the business of mining asbestos or in the
9 business of selling or distributing asbestos fibers or
10 in the business of manufacturing, distributing,
11 removing, or installing asbestos-containing products
12 which were the same or substantially the same as those
13 products previously manufactured, distributed,
14 removed, or installed by the transferor,
15 f. a contractual obligation existing as of November 1,
16 2004, that was entered into with claimants or
17 potential claimants or their counsel and which
18 resolves asbestos claims or potential asbestos claims,
19 g. any claim made against the estate of a debtor in a
20 bankruptcy proceeding commenced prior to November 1,
21 2004, under the United States Bankruptcy Code, 11
22 U.S.C., Section 101 et seq. by or against such debtor,
23 or against a bankruptcy trust established under 11
24 U.S.C., Section 524(g) or similar provisions of the

1 United States Code in such a bankruptcy proceeding
2 commenced prior to such date, or

3 h. a cause of action for premises liability, but only if
4 the successor owned or controlled the premises at
5 issue after the merger or consolidation.

6 C. 1. Except as further limited in paragraph 2 of this
7 subsection, the cumulative successor asbestos-related liabilities of
8 a corporation are limited to the fair market value of the total
9 gross assets of the transferor determined as of the time of the
10 merger or consolidation. The corporation shall not have any
11 responsibility for successor asbestos-related liabilities in excess
12 of this limitation.

13 2. If the transferor had assumed or incurred successor
14 asbestos-related liabilities in connection with a prior merger or
15 consolidation with a prior transferor, the fair market value of the
16 total assets of the prior transferor, determined as of the time of
17 such earlier merger or consolidation, shall be substituted for the
18 limitation set forth in paragraph 1 of this subsection for purposes
19 of determining the limitation of liability of a corporation.

20 D. 1. A corporation may establish the fair market value of
21 total gross assets for the purpose of the limitations under
22 subsection C of this section through any method reasonable under the
23 circumstances, including:
24

1 a. by reference to the going concern value of the assets
2 or to the purchase price attributable to or paid for
3 the assets in an arm's-length transaction, or

4 b. in the absence of other readily available information
5 from which fair market value can be determined, by
6 reference to the value of the assets recorded on a
7 balance sheet.

8 2. Total gross assets include intangible assets.

9 3. Total gross assets include the aggregate coverage under any
10 applicable liability insurance that was issued to the transferor
11 whose assets are being valued for purposes of this section and which
12 insurance has been collected or is collectable to cover successor
13 asbestos-related liabilities, except compensation for liabilities
14 arising from workers' exposure to asbestos solely during the course
15 of their employment by the transferor. A settlement of a dispute
16 concerning such insurance coverage entered into by a transferor or
17 successor with the insurers of the transferor ten (10) years or more
18 before the enactment of this section shall be determinative of the
19 aggregate coverage of such liability insurance to be included in the
20 calculation of the transferor's total gross assets.

21 4. The fair market value of total gross assets shall reflect no
22 deduction for any liabilities arising from any asbestos claim.

1 E. 1. Except as otherwise provided in this section, the fair
2 market value of total gross assets at the time of a merger or
3 consolidation increases annually at a rate equal to the sum of:

4 a. the prime rate as listed in the first edition of the
5 Wall Street Journal published for each calendar year
6 since the merger or consolidation, and

7 b. one percent (1%).

8 2. The rate provided for in paragraph 1 of this subsection
9 shall not be compounded.

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

18 4. No adjustment of the fair market value of total gross assets
19 shall be applied to any liability insurance otherwise included in
20 the definition of total gross assets.

21 SECTION 2. This act shall become effective November 1, 2009.

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