

SECOND REGULAR SESSION

HOUSE BILL NO. 2137

94TH GENERAL ASSEMBLY

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

Read 1st time February 14, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4046L.01I

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 Innocent 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;
 - 10 (b) Any claim made by or on behalf of any person exposed to asbestos, or a
11 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.

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

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

17 (3) "Innocent successor", a corporation that assumes or incurs or has assumed or
18 incurred successor asbestos-related liabilities that is a successor and became a successor
19 before January 1, 1972, or is any of that successor corporation's successors; and that after
20 a merger or consolidation did not continue in the business of mining asbestos, in the
21 business of selling or distributing asbestos fibers, or in the business of manufacturing,
22 distributing, removing, or installing asbestos-containing products that were the same or
23 substantially the same as those products previously manufactured, distributed, removed,
24 or installed by the transferor;

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

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

537.926. 1. The limitations in section 537.929 shall apply to any innocent successor
2 corporation.

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

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

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

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

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

6 **2.** If the transferor had assumed or incurred successor asbestos-related or 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 an innocent
11 successor corporation.

537.932. 1. An innocent successor corporation may establish the fair market value
2 of total gross assets for the purpose of the limitations under section 537.929 through any
3 method reasonable 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. Without limiting the
19 foregoing, to the extent total gross assets include any such liability insurance, a settlement
20 of a dispute concerning any such liability insurance coverage entered into by a transferor
21 or successor with the insurers of the transferor before August 28, 2008, shall be
22 determinative of the total coverage of such liability insurance to be included in the
23 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 value of total gross assets at the time of the merger or consolidation shall increase 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, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

(2) One percent.

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

3. The adjustment of the fair market value of total gross assets shall continue as provided in subsection 1 of this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the innocent successor corporation or a predecessor 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.

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

537.938. 1. The courts of this state shall construe the provisions of sections 537.920 to 537.938 liberally with regard to innocent successors.

2. Sections 537.920 to 537.938 shall apply to all asbestos claims filed against an innocent successor on or after the effective date of sections 537.920 to 537.938. Sections 537.920 to 537.938 shall also apply to any pending asbestos claims against an innocent successor in which trial has not commenced as the effective date of sections 537.920 to 537.938 except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.

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