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HOUSE BILL NO. 142

Offered January 9, 2008

Prefiled December 21, 2007

A *BILL to amend the Code of Virginia by adding in Title 8.01 a chapter numbered 28, consisting of sections numbered 8.01-698 through 8.01-704, relating to the Successor Asbestos-Related Liability Fairness Act.*

Patrons—Kilgore, Athey, Carrico, Crockett-Stark and Sherwood

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 8.01 a chapter numbered 28, consisting of sections numbered 8.01-698 through 8.01-704, as follows:

CHAPTER 28.**SUCCESSOR ASBESTOS-RELATED LIABILITY FAIRNESS ACT.****§ 8.01-698. Definitions.**

As used in this chapter:

"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, to the extent such claims are recognized under the laws of the Commonwealth, including (i) any claim related to the health effects of exposure to asbestos, including any claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance; (ii) any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and (iii) any claim for damage or loss caused by the installation, presence, or removal of asbestos.

"Corporation" means a corporation for profit, including a domestic corporation organized under the laws of the Commonwealth, or a foreign corporation organized under laws other than the laws of the Commonwealth.

"Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

"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, and 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 § 8.01-702, are or were paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in the Commonwealth or another jurisdiction.

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

§ 8.01-699. Successor asbestos-related liability constitutes threat to viability of Virginia companies.

It is hereby found and declared that the number of asbestos-related claims is significant and threatens the continued viability of companies, including Virginia employers, that have never been in the business of manufacturing, selling, or distributing asbestos or asbestos products and are argued to be liable only as successor corporations. A public purpose is served by providing limitations of liabilities for asbestos-related claims against successor corporations. It is essential to the public interests to provide relief to these innocent successor corporations so that they may remain viable and continue to contribute to the Commonwealth.

§ 8.01-700. Applicability of limitations on successor asbestos-related liabilities.

A. The limitations in § 8.01-701 shall apply to a corporation that is a successor and became a successor prior to January 1, 1972, or is a successor of that corporation's successors.

B. The limitations in § 8.01-701 shall not apply to:

1. Workers' compensation benefits paid by or on behalf of an employer to an employee under Title 65.2 or a comparable workers' compensation law of another jurisdiction;

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59 2. Any claim against a corporation that does not constitute a successor asbestos-related liability; or
60 3. Any obligation under the National Labor Relations Act (29 U.S.C. § 151 et seq.), as amended, or
61 under any collective bargaining agreement.

62 § 8.01-701. Limitations on successor asbestos-related liabilities.

63 A. Except as provided in subsection B, the cumulative successor asbestos-related liabilities of a
64 corporation are limited to the fair market value of the total gross assets of the transferor determined as
65 of the time of the merger or consolidation. The corporation is not responsible for successor
66 asbestos-related liabilities in excess of this limitation.

67 B. If the transferor assumed or incurred successor asbestos-related liabilities in connection with a
68 prior merger or consolidation with a prior transferor, then the fair market value of the total assets of
69 the prior transferor, determined as of the time of the earlier merger or consolidation, shall be
70 substituted for the limitation set forth in subsection A for purposes of determining the limitation of
71 liability of a corporation.

72 § 8.01-702. Establishing fair market value of total gross assets.

73 A. A corporation may establish the fair market value of total gross assets for the purpose of the
74 limitations under § 8.01-701 through any method reasonable under the circumstances, including:

75 1. By reference to the going-concern value of the assets or to the purchase price attributable to or
76 paid for the assets in an arm's-length transaction; or

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

79 B. Total gross assets include intangible assets.

80 C. To the extent total gross assets include any liability insurance issued to the transferor whose
81 assets are being valued for purposes of this section, the applicability, assignability, terms, conditions,
82 and limits of such insurance shall not be affected by this chapter, nor shall this chapter otherwise affect
83 the rights and obligations of a transferor, successor, or insurer under any insurance contract or related
84 agreement, including, but not limited to, rights and obligations under pre-enactment settlements between
85 a transferor or successor and its insurers resolving liability insurance coverage, and the rights of an
86 insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or
87 to seek contribution from a successor for uninsured or self-insured periods or periods where insurance
88 is uncollectible or otherwise unavailable. To the extent total gross assets include any such liability
89 insurance, a settlement of a dispute concerning such liability insurance coverage entered into by a
90 transferor or successor with the insurers of the transferor before the effective date of this chapter shall
91 be determinative of the total coverage of such liability insurance to be included in the calculation of the
92 transferor's total gross assets.

93 § 8.01-703. Adjustment of fair market value.

94 A. Except as provided in subsections B, C, and D, the fair market value of total gross assets at the
95 time of a merger or consolidation increases annually at a rate equal to the sum of (i) the prime rate as
96 listed in the first edition of the Wall Street Journal published for each calendar year since the merger
97 or consolidation, unless the prime rate is not published in that edition, in which case a reasonable
98 determination of the prime rate on the first day of the year may be used, and (ii) one percent.

99 B. The rate provided in subsection A is not compounded.

100 C. The adjustment of fair market value of total gross assets continues as provided under subsection
101 A until the date the adjusted value is first exceeded by the cumulative amounts of successor
102 asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a
103 predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which
104 the fair market value of total gross assets is determined.

105 D. No adjustment of the fair market value of total gross assets shall be applied to any liability
106 insurance that may be included in the definition of total gross assets under § 8.01-702.

107 § 8.01-704. Scope of act.

108 A. To the fullest extent permissible, the courts shall liberally apply the limitations under this chapter
109 to the issue of successor asbestos-related liabilities.

110 B. If any provision of this chapter or the application thereof to any person or circumstance is held
111 invalid, such invalidity shall not affect the provisions or applications of this chapter that can be given
112 effect without the invalid provision or application, and to that end the provisions of this chapter are
113 severable.

114 C. This chapter shall apply to all asbestos claims filed on or after its effective date and to all
115 pending asbestos claims for which trial had not commenced as of the effective date of this chapter,
116 except that any provisions of this chapter which would be unconstitutional if applied retroactively shall
117 only be applied prospectively.