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SENATE BILL NO. 1493

Offered January 22, 2009

A *BILL* to amend the Code of Virginia by adding a section numbered 13.1-721.2, relating to asbestos-related liabilities of successor corporations.

Patrons—Puller, Howell, Marsh, Puckett, Stosch, Vogel, Wagner and Watkins

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 13.1-721.2, as follows:

§ 13.1-721.2. Applicability of limitations on successor asbestos-related liabilities.

A. As used in this section:

"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.

"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 subsection F, 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.

"Total gross assets" includes intangible assets.

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

B. The limitations in subsection D shall apply to a corporation that is a successor and became a successor prior to January 1, 1972, and to any successors of that corporation.

C. The limitations in subsection D 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;

2. Any claim against a corporation that does not constitute a successor asbestos-related liability; or

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

D. Except as provided in subsection E, 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 is not responsible for successor asbestos-related liabilities in excess of this limitation.

E. If the transferor 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 the earlier merger or consolidation, shall be substituted for the limitation set forth in subsection D for purposes of determining the limitation of liability of a corporation.

F. A corporation may establish the fair market value of total gross assets for the purpose of the limitations under subsection D through any method reasonable under the circumstances, including:

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

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

63 G. To the extent total gross assets include any liability insurance issued to the transferor whose
64 assets are being valued for purposes of this section, the applicability, assignability, terms, conditions,
65 and limits of such insurance shall not be affected by this chapter, nor shall this chapter otherwise affect
66 the rights and obligations of a transferor, successor, or insurer under any insurance contract or related
67 agreement, including, but not limited to, rights and obligations under pre-enactment settlements between
68 a transferor or successor and its insurers resolving liability insurance coverage, and the rights of an
69 insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or
70 to seek contribution from a successor for uninsured or self-insured periods or periods where insurance
71 is uncollectible or otherwise unavailable. To the extent total gross assets include any such liability
72 insurance, a settlement of a dispute concerning such liability insurance coverage entered into by a
73 transferor or successor with the insurers of the transferor before the effective date of this chapter shall
74 be determinative of the total coverage of such liability insurance to be included in the calculation of the
75 transferor's total gross assets.

76 H. Except as provided in subdivisions 1, 2, and 3, the fair market value of total gross assets at the
77 time of a merger or consolidation increases annually at a rate that is equal to the sum of (i) the prime
78 rate as listed in the first edition of the Wall Street Journal published for each calendar year since the
79 merger or consolidation, unless the prime rate is not published in that edition, in which case a
80 reasonable determination of the prime rate on the first day of the year may be used, and (ii) one
81 percent. Notwithstanding the foregoing provisions of this subsection:

82 1. The rate to be determined in accordance with in the first sentence of this subsection is not
83 compounded;

84 2. The adjustment of fair market value of total gross assets continues as provided in the first
85 sentence of this subsection until the date the adjusted value is first exceeded by the cumulative amounts
86 of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation
87 or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for
88 which the fair market value of total gross assets is determined; and

89 3. No adjustment of the fair market value of total gross assets shall be applied to any liability
90 insurance that may be included pursuant to subsection G in the determination of total gross assets.

91 1. To the fullest extent permissible, courts shall liberally apply the limitations under this section to
92 the issue of successor asbestos-related liabilities.

93 J. If any provision of this section or the application thereof to any person or circumstance is held
94 invalid, such invalidity shall not affect the provisions or applications of this section that can be given
95 effect without the invalid provision or application, and to that end the provisions of this section are
96 severable.

97 K. This section shall apply to all asbestos claims filed on or after July 1, 2009, and to all pending
98 asbestos claims for which trial had not commenced as of such date, except that any provisions of this
99 section that would be unconstitutional if applied retroactively shall only be applied prospectively.