

**State Corporation Commission
2009 Fiscal Impact Statement**

1. Bill Number: HB1762

House of Origin X Introduced ___ Substitute ___ Engrossed
Second House ___ In Committee ___ Substitute ___ Enrolled

2. Patron: Kilgore

3. Committee: Commerce and Labor

4. Title: Successor corporations; asbestos-related liability.

5. Summary: Successor corporations; asbestos-related liability. Limits the cumulative successor asbestos-related liabilities of a corporation to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation, and states that the corporation is not responsible for successor asbestos-related liabilities in excess of this limit, as the limit may be adjusted. The limitation does not apply to workers' compensation benefits, claims not constituting successor asbestos-related liability, or obligations under the National Labor Relations Act or collective bargaining agreements. Further, the limitation applies only to a corporation that assumed or incurred certain asbestos-related liabilities prior to January 1, 1972, and to any successors of that corporation. A corporation may establish the fair market value of total gross assets by reference to the going-concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction, by reference to the value of the assets recorded on a balance sheet if there is no other readily available information from which fair market value can be determined, or any other method reasonable under the circumstances. The limitation applies to all asbestos claims filed on or after July 1, 2009, and to all pending asbestos claims for which trial had not commenced as of such date, except that any provision that would be unconstitutional if applied retroactively will be applied prospectively.

6. Fiscal Impact Estimates: No fiscal impact on state agencies (unless involved in asbestos litigation involving successor corporations).

7. Budget Amendment Necessary: None noted.

8. Fiscal Implications: No fiscal impact on state agencies (unless involved in asbestos litigation involving successor corporations).

9. Specific Agency or Political Subdivisions Affected: None

10. Technical Amendment Necessary: See Item 11

11. Other Comments: Because this bill relates to claims for damages, etc. arising from asbestos, consideration may be given to moving the proposed section to Title 8.01 of the Code of Virginia. Title 8.01 already addresses asbestos matters (see §§ 8.01-249, 8.01-250.1, 8.01-267.9, 8.01-277, 8.01-335 and 8.01-374.1 of the Code of Virginia).

House Bill 1762 is currently drawn to Article 12 (mergers and share exchanges) of the Virginia Stock Corporation Act (Chapter 9 of Title 13.1 of the Code of Virginia).

If the provisions of the legislation remain in Title 13.1, the patron may wish to consider the following items/issues: p. 1, line 22 - insert “organized” after “a corporation”; pp. 1-2, lines 32, 51, 55, 78, 88 – suggest that “effective date” be substituted for “time”; p. 1, line 51 – should “successor” be substituted for “corporation”? p. 2, lines 66, 74 – it appears that “section” should be substituted for “chapter” in three places; p. 2, line 77 – substitute “as of” for “at”; p. 2, line 83 - delete “in” after “in accordance with.”

In addition:

- The bill applies only to corporations. Should the provisions apply to all types of business entities?
- The term “successor asbestos-related liabilities” (p. 1, lines 26 – 37) refers to a merger involving only corporations. In Virginia, a corporation can merge with any other type of business entity. The use of the term “business entity” rather than “corporation” might address this issue.
- Some provisions in the other business entity statutes provide that when a merger becomes effective, all liabilities of the non-surviving parties to the merger are vested in the survivor. The provisions of subsections D and E of proposed § 13.1-721.2 in House Bill 1762 (p.1, lines 49 – 57) provide a limitation on the liability of the survivor. There may be a conflict in the bill. If there is a conflict, the patron may wish to consider as a possible solution – expanding the bill to include an amendment to § 13.1-721 and similar sections in other business entity statutes to add at the end of 721 A 4 the words “, except as otherwise provided by law” (or something similar).

Date: 1/14/2009 J. H. Peck/A. Bowser
cc: Secretary of Commerce and Trade