

HOUSE BILL REPORT

HB 2507

As Reported by House Committee On:
Judiciary

Title: An act relating to limitations on asbestos-related liabilities relating to certain mergers or consolidations occurring before 1972.

Brief Description: Creating provisions relating to asbestos-related liabilities.

Sponsors: Representatives Kessler, Rodne, Kirby, Priest, Shea, Hunt, Warnick and Moeller.

Brief History:

Committee Activity:

Judiciary: 1/11/10, 1/21/10 [DP].

Brief Summary of Bill

- Limits a successor corporation's liability for asbestos-related claims to an amount equal to the fair market value of the predecessor corporation's total gross assets.
- Applies to successor corporations that assumed or incurred asbestos-related liabilities before January 1, 1972.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 6 members: Representatives Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby and Ross.

Minority Report: Do not pass. Signed by 4 members: Representatives Pedersen, Chair; Flannigan, Ormsby and Roberts.

Staff: Trudes Tango (786-7384).

Background:

Under Washington's Business Corporation Act, when one or more corporations formally merge pursuant to statutory procedures, the surviving corporation has all the debts and

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liabilities of each predecessor corporation absorbed in the merger. Absent a merger, the general rule is that a corporation purchasing the assets of another corporation does not, by reason of the purchase of assets, become liable for the debts and liabilities of the selling corporation.

Recently, some states have adopted laws addressing successor asbestos-related liability. The American Legislative Exchange Council has drafted model legislation on successor asbestos-related liability. The model legislation limits the total financial liability of a successor corporation to an amount equal to what the predecessor's total gross assets would be worth today.

Summary of Bill:

A corporation that assumed or incurred asbestos-related liabilities before January 1, 1972, as a result of a merger or consolidation with another corporation has limited asbestos-related liability. The cumulative successor asbestos-related liability is limited to the fair market value of the total gross assets of the predecessor corporation.

The fair market value is determined at the time the corporations merged or consolidated and includes an annual adjustment based on the prime rate of each year after merger or consolidation, plus 1 percent. Once the limit is reached, the successor corporation does not have any responsibility for successor asbestos-related liabilities in excess of that limit.

The limitations do not apply to:

- workers' compensation benefits;
- claims that do not constitute successor asbestos-related liabilities;
- insurers;
- any obligation under the National Labor Relations Act or under any collective bargaining agreement;
- a successor that continued the business of mining asbestos, selling or distributing asbestos fibers, or manufacturing, distributing, removing, or installing asbestos-containing products that were the same or substantially the same as those of the predecessor corporation;
- a contractual obligation existing as of the effective date of the act that was entered into with claimants and that resolves asbestos claims;
- any claim made against the estate of a debtor, or a bankruptcy trust, in a bankruptcy proceeding commenced prior to April 1, 2003;
- a successor asbestos-related liability arising from a common law claim for premises liability if the successor owned or controlled the premises after the merger or consolidation; and
- any government claims brought under state Model Toxics Control Act or the federal Superfund law.

Procedures are created to determine the fair market value of total gross assets. The annual adjustment of the fair market value of total gross assets continues until the date the adjusted

value is exceeded by the cumulative amounts of successor asbestos-related liabilities already paid, or committed to be paid, by or on behalf of the successor corporation or a predecessor.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is not a new issue and the bill addresses a unique situation.. The corporation subject to this bill does business in Washington and has millions of dollars invested in the state. Crown Corporation bought the predecessor corporation 50 years ago and never made or sold asbestos products, yet the company has paid out over \$600 million in claims. The predecessor's side business dealing with asbestos was sold off within 93 days of Crown's merger. Several other states have passed similar legislation. The company employs thousands of people and this bill will help protect Washington jobs and employee pensions. The company bought the corporation before asbestos claims began to arise. Asbestos-related liabilities is damaging to Crown's competitiveness.

(Information only) Most asbestos claims settle and in order to get joint and several liability, the case must be brought to judgment. The fiscal note reflects how much the Department of Labor and Industries would not be able to recover if Crown were not liable.

(Opposed) Crown cannot claim it did not know of asbestos-related dangers when it bought the predecessor corporation. This bill is special legislation and may not be constitutional. The bill would treat future claimants different than claimants in the present. Under the bill, if a person was diagnosed earlier, that person could recover damages against Crown, but if the person were diagnosed later in life, he or she would not be able to recover damages. Even if there is joint and several liability, the practical matter is that joint and several liability will not happen. The nature of the settlements cannot be shared and it will not be possible to tell whether other defendants are out. There is a big difference between this bill and the Senate bill introduced last year, which had a section addressing a court case. When entities merge, the successor takes the good with the bad. That is the chance Crown took. This bill shifts the costs of this company to other people.

Persons Testifying: (In support) Representative Kessler, prime sponsor; Dan Joanis, Crown Cork & Seal; Barry Mesher, Lane Powell PC; and Anna Jancewicz, Teamsters Local 117.

(Information only) Jim Nylander, Department of Labor and Industries.

(Opposed) Brian Ladenburg, Bergman, Draper & Frackt; and Larry Shannon, Washington State Association of Justice.

Persons Signed In To Testify But Not Testifying: None.