



Ohio Revised Code

Section 2307.97 Cumulative successor asbestos-related liabilities of corporation.

Effective: April 7, 2005

Legislation: Senate Bill 80 - 125th General Assembly

(A) As used in this section:

(1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

(2) "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. "Asbestos claim" includes any of the following:

(a) A claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos;

(b) A claim for damage or loss to property that is caused by the installation, presence, or removal of asbestos.

(3) "Corporation" means a corporation for profit, including the following:

(a) A domestic corporation that is organized under the laws of this state;

(b) A foreign corporation that is organized under laws other than the laws of this state and that has had a certificate of authority to transact business in this state or has done business in this state.

(4) "Successor" means a corporation or a subsidiary of a corporation that assumes or incurs, or had assumed or incurred, successor asbestos-related liabilities or had successor asbestos-related liabilities imposed on it by court order.



(5)(a) "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, if the liabilities are related in any way to asbestos claims and either of the following applies:

(i) The liabilities are assumed or incurred by a successor as a result of or in connection with an asset purchase, stock purchase, merger, consolidation, or agreement providing for an asset purchase, stock purchase, merger, or consolidation, including a plan of merger.

(ii) The liabilities were imposed by court order on a successor.

(b) "Successor asbestos-related liabilities" includes any liabilities described in division (A)(5)(a)(i) of this section that, after the effective date of the asset purchase, stock purchase, merger, or consolidation, are paid, otherwise discharged, committed to be paid, or committed to be otherwise discharged by or on behalf of the successor, or by or on behalf of a transferor, in connection with any judgment, settlement, or other discharge of those liabilities in this state or another jurisdiction.

(6) "Transferor" means a corporation or its shareholders from which successor asbestos-related liabilities are or were assumed or incurred by a successor or were imposed by court order on a successor.

(B) The limitations set forth in division (C) of this section apply to a corporation that is either of the following:

(1) A successor that became a successor prior to January 1, 1972, if either of the following applies:

(a) In the case of a successor in a stock purchase or an asset purchase, the successor paid less than fifteen million dollars for the stock or assets of the transferor.

(b) In the case of a successor in a merger or consolidation, the fair market value of the total gross assets of the transferor, at the time of the merger or consolidation, excluding any insurance of the transferor, was less than fifty million dollars.



(2) Any successor to a prior successor if the prior successor met the requirements of division (B)(1)(a) or (b) of this section, whichever is applicable.

(C)(1) Except as otherwise provided in division (C)(2) of this section, the cumulative successor asbestos-related liabilities of a corporation shall be limited to either of the following:

(a) In the case of a corporation that is a successor in a stock purchase or an asset purchase, the fair market value of the acquired stock or assets of the transferor, as determined on the effective date of the stock or asset purchase;

(b) In the case of a corporation that is a successor in a merger or consolidation, the fair market value of the total gross assets of the transferor, as determined on the effective date of the merger or consolidation.

(2)(a) If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior purchase of assets or stock involving a prior transferor, the fair market value of the assets or stock purchased from the prior transferor, determined as of the effective date of the prior purchase of the assets or stock, shall be substituted for the limitation set forth in division (C)(1)(a) of this section for the purpose of determining the limitation of the liability of a corporation.

(b) If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a merger or consolidation involving a prior transferor, the fair market value of the total gross assets of the prior transferor, determined as of the effective date of the prior merger or consolidation, shall be substituted for the limitation set forth in division (C)(1)(b) of this section for the purpose of determining the limitation of the liability of a corporation.

(3) A corporation described in division (C)(1) or (2) of this section shall have no responsibility for any successor asbestos-related liabilities in excess of the limitation of those liabilities as described in the applicable division.

(D)(1) A corporation may establish the fair market value of assets, stock, or total gross assets under division (C) of this section by means of any method that is reasonable under the circumstances,



including by reference to their going-concern value, to the purchase price attributable to or paid for them in an arm's length transaction, or, in the absence of other readily available information from which fair market value can be determined, to their value recorded on a balance sheet. Assets and total gross assets shall include intangible assets. A showing by the successor of a reasonable determination of the fair market value of assets, stock, or total gross assets is prima-facie evidence of their fair market value.

(2) For purposes of establishing the fair market value of total gross assets under division (D)(1) of this section, the total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor the assets of which are being valued for purposes of the limitations set forth in division (C) of this section, if the insurance has been collected or is collectable to cover the successor asbestos-related liabilities involved. Those successor asbestos-related liabilities do not include any compensation for any liabilities arising from the exposure of workers to asbestos solely during the course of their employment by the transferor. Any settlement of a dispute concerning the insurance coverage described in this division that is entered into by a transferor or successor with the insurer of the transferor before the effective date of this section is determinative of the aggregate coverage of the liability insurance that is included in the determination of the transferor's total gross assets.

(3) After a successor has established a reasonable determination of the fair market value of assets, stock, or total gross assets under divisions (D)(1) and (2) of this section, a claimant that disputes that determination of the fair market value has the burden of establishing a different fair market value.

(4)(a) Subject to divisions (D)(4)(b), (c), and (d) of this section, the fair market value of assets, stock, or total gross assets at the time of the asset purchase, stock purchase, merger, or consolidation increases annually, at a rate equal to the sum of the following:

(i) The prime rate as listed in the first edition of the wall street journal published for each calendar year since the effective date of the asset purchase, stock purchase, merger, or consolidation, or, if the prime rate is not published in that edition of the wall street journal, the prime rate as reasonably determined on the first business day of the year;

(ii) One per cent.



(b) The rate that is determined pursuant to division (D)(4)(a) of this section shall not be compounded.

(c) The adjustment of the fair market value of assets, stock, or total gross assets shall continue in the manner described in division (D)(4)(a) of this section until the adjusted fair market value is first exceeded by the cumulative amounts of successor asbestos-related liabilities that are paid or committed to be paid by or on behalf of a successor or prior transferor, or by or on behalf of a transferor, after the time of the asset purchase, stock purchase, merger, or consolidation for which the fair market value of assets, stock, or total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets as provided in division (D)(4)(a) of this section shall be applied to any liability insurance that is otherwise included in total gross assets as provided in division (D)(2) of this section.

(E)(1) The limitations set forth in division (C) of this section shall apply to the following:

(a) All asbestos claims, including asbestos claims that are pending on the effective date of this section, and all litigation involving asbestos claims, including litigation that is pending on the effective date of this section;

(b) Successors of a corporation to which this section applies.

(2) The limitations set forth in division (C) of this section do not apply to any of the following:

(a) Workers' compensation benefits that are paid by or on behalf of an employer to an employee pursuant to any provision of Chapter 4121., 4123., 4127., or 4131. of the Revised Code or comparable workers' compensation law of another jurisdiction;

(b) Any claim against a successor that does not constitute a claim for a successor asbestos-related liability;

(c) Any obligations arising under the "National Labor Relations Act," 49 Stat. 449, 29 U.S.C. 151 et



seq., as amended, or under any collective bargaining agreement;

(d) Any contractual rights to indemnification.

(F) The courts in this state shall apply, to the fullest extent permissible under the Constitution of the United States, this state's substantive law, including the provisions of this section, to the issue of successor asbestos-related liabilities.