

BILL TEXT:

STATE OF NEW YORK

6996

2005-2006 Regular Sessions

IN ASSEMBLY

April 1, 2005

Introduced by M. of A. SCOZZAFAVA -- read once and referred to the
Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law and the civil practice law
and rules, in relation to limitations on asbestos-related liabilities
relating to certain mergers and consolidations

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The business corporation law is amended by adding a new
2 section 906-a to read as follows:

3 § 906-a. Limitations on asbestos-related liabilities relating to certain
4 mergers or consolidations.

5 (a) Limitation on successor asbestos-related liabilities.

6 (1) Except as further limited in subparagraph two of this paragraph,
7 the cumulative successor asbestos-related liabilities of a domestic
8 corporation that was incorporated in this state prior to May first, two
9 thousand five, shall be limited to the fair market value of the total
10 assets of the transferor determined as of the time of the merger or
11 consolidation and such corporation shall have no responsibility for
12 successor asbestos-related liabilities in excess of such limitation.

13 (2) If the transferor had assumed or incurred successor asbestos-re-
14 lated liabilities in connection with a prior merger or consolidation
15 with a prior transferor, then the fair market value of the total assets
16 of the prior transferor, determined as of the time of such earlier merg-
17 er or consolidation, shall be substituted for the limitation set forth
18 in subparagraph one of this paragraph for purposes of determining the
19 limitation of liability of a domestic corporation.

20 (b) Limitation on total assets available to satisfy successor asbes-
21 tos-related liabilities.

22 (1) Except as further limited in subparagraph two of this paragraph,
23 the assets of a domestic corporation that was incorporated in this state
24 prior to May first, two thousand five, shall be exempt from restraint,
25 attachment or execution on judgments related to claims for successor
26 asbestos-related liabilities if the cumulative amounts which, after the
27 time of the merger or consolidation as to which the fair market value of

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 total assets is determined for purposes of this paragraph and paragraph
2 (a) of this section, are paid or committed to be paid by or on behalf of
3 the corporation, or by or on behalf of a transferor, in connection with
4 settlements, judgments or other discharges of claims of asbestos-related
5 liabilities, exceed the fair market value of the total assets of the
6 transferor, determined as of the time of the merger or consolidation.

7 (2) If the transferor had assumed or incurred successor asbestos-re-
8 lated liabilities in connection with a prior merger or consolidation
9 with a prior transferor, then the fair market value of the total assets
10 of the prior transferor, determined as of the time of such earlier merg-
11 er or consolidation, shall be substituted for the limitation set forth
12 in subparagraph one of this paragraph for purposes of determining the
13 extent of the exemption of the assets of a domestic corporation.

14 (c) Fair market value of total assets.

15 (1) A domestic corporation may establish the fair market value of
16 total assets through any method reasonable under the circumstances,
17 including by reference to the going concern value of such assets or to
18 the purchase price attributable to or paid for such assets in an arm's
19 length transaction, or, in the absence of other readily available infor-
20 mation from which fair market value can be determined, by reference to
21 the value of such assets recorded on a balance sheet. Total assets shall
22 include intangible assets. A showing by the domestic corporation of a
23 reasonable determination of the fair market value of total assets shall
24 be prima facie evidence of their fair market value.

25 (2) Once a reasonable determination of the fair market value of total
26 assets has been thus established by a domestic corporation, a claimant
27 disputing that determination of value shall then have the burden of
28 establishing a different fair market value of such assets.

29 (3) For the purpose of adjusting the limitations set forth in para-
30 graphs (a) and (b) of this section to account for the passage of time,
31 the fair market value of total assets at the time of a merger or consol-
32 idation shall be increased annually, until the earlier of:

33 (i) The date of the settlement, judgment or other discharge to which
34 the limitations in paragraph (a) or (b) of this section are being
35 applied; or

36 (ii) The date on which such adjusted fair market value is first
37 exceeded by the cumulative amounts paid or committed to be paid by or on
38 behalf of the corporation, or by or on behalf of a transferor, after the
39 time of the merger or consolidation as to which the fair market value of
40 total assets is determined for purposes of paragraphs (a) and (b) of
41 this section, in connection with settlements, judgments or other
42 discharges of the successor asbestos-related liabilities, at the rate
43 equal to the prime rate as listed in the first edition of the Wall
44 Street Journal published for each calendar year since such merger or
45 consolidation, plus one percent not compounded.

46 (d) Application.

47 (1) The limitations set forth in paragraphs (a) and (b) of this
48 section shall apply to mergers or consolidations effected under the laws
49 of this state or another jurisdiction consummated prior to May first,
50 two thousand five.

51 (2) The limitations set forth in paragraphs (a) and (b) of this
52 section shall apply to all asbestos claims, including existing asbestos
53 claims, and all litigation, including existing litigation, and shall
54 apply to successors of a domestic corporation to which this section
55 applies.

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1 (3) The limitations set forth in paragraphs (a) and (b) of this
2 section shall not apply to workers' compensation benefits paid by or on
3 behalf of an employer to an employee.

4 (4) The limitations set forth in paragraphs (a) and (b) of this
5 section shall not apply to any claim against a domestic corporation that
6 does not constitute a successor asbestos-related liability.

7 (5) The limitations set forth in paragraphs (a) and (b) of this
8 section shall not apply to any obligation arising under the national
9 labor relations act (49 Stat. 449, 29 U.S.C. § 151 et seq.), or under
10 any collective bargaining agreement.

11 (e) Definitions. As used in this section, the following words and
12 phrases shall have the following meanings:

13 (1) "Asbestos claim" shall mean any claim, wherever or whenever made,
14 for damages, losses, indemnification, contribution or other relief,
15 arising out of, based on or in any way related to asbestos, including
16 property damage caused by the installation, presence or removal of
17 asbestos, the health effects of exposure to asbestos, including any
18 claim for personal injury, death, mental or emotional injury, risk of
19 disease or other injury or the costs of medical monitoring or surveil-
20 lance. The term shall also include any claim made by or on behalf of any
21 person exposed to asbestos or any representative, spouse, parent, child
22 or other relative of any such person.

23 (2) "Successor asbestos-related liabilities" shall mean any liabil-
24 ities, whether known or unknown, asserted or unasserted, absolute or
25 contingent, accrued or unaccrued, liquidated or unliquidated or due or
26 to become due, related in any way to asbestos claims, that were assumed
27 or incurred by a domestic corporation or foreign corporation as a result
28 of or in connection with a merger or consolidation, or the plan of merg-
29 er or consolidation related thereto, with or into another domestic
30 corporation or foreign corporation effected under the laws of this state
31 or another jurisdiction or which are related in any way to asbestos
32 claims based on the exercise of control or the ownership of stock of
33 such corporation prior to such merger or consolidation. The term shall
34 also include liabilities which, after the time of the merger or consol-
35 idation as to which the fair market value of total assets is determined
36 for purposes of paragraphs (a) and (b) of this section, where or are
37 paid or otherwise discharged, or committed to be paid or otherwise
38 discharged, by or on behalf of the corporation, or by or on behalf of a
39 transferor, in connection with settlements, judgements or other
40 discharges in this state or another jurisdiction.

41 (3) "Transferor" shall mean a domestic corporation or foreign corpo-
42 ration from which successor asbestos-related liabilities are assumed or
43 incurred.

44 § 2. The civil practice law and rules is amended by adding a new
45 section 214-f to read as follows:

46 § 214-f. Two year limitation; exposure to asbestos. The following
47 actions and proceedings shall be commenced within two years:

48 An action to recover damages for injury to a person or for the death
49 of a person caused by exposure to asbestos shall be commenced within two
50 years from the date on which the person is informed by a licensed physi-
51 cian that the person has been injured by such exposure, or upon the date
52 on which the person knew, or in the exercise of reasonable diligence
53 should have known, that the person had an injury which was caused by
54 such exposure, whichever date occurs first.

55 § 3. This act shall take effect on the one hundred twentieth day after
56 it shall have become a law.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION**

submitted in accordance with Assembly Rule III, Sec 1(e)

BILL NUMBER: A6996

SPONSOR: Scozzafava

TITLE OF BILL: An act to amend the business corporation law and the civil practice law and rules, in relation to limitations on asbestos-related liabilities relating to certain mergers and consolidations

PURPOSE OR GENERAL IDEA OF BILL:

To limit the asbestos-related liabilities of companies that incurred those liabilities because they are successors by corporate merger to companies that had been involved with asbestos.

SUMMARY OF SPECIFIC PROVISIONS:

This bill amends the business corporation law by adding a new section 906A to limit asbestos-related liabilities relating to certain mergers or consolidations. The civil practice law and rules is amended by adding a new section 214-f, specifying that an action to recover damages for injury to a person or for the death of a person caused by exposure to asbestos shall be commenced within two years from the date on which the person is informed by a licensed physician that the person has been injured by such exposure, or upon the date on which the person knew, or in the exercise of reasonable diligence should have known, that the person had an injury which was caused by such exposure, whichever date occurs first.

JUSTIFICATION:

Currently, when a company merges with another company, or consolidates, the new company assumes responsibility for any asbestos-related civil lawsuits the former company would have faced. This legislation is designed to ensure that a company's savings, investments and retirement funds are not at risk due to litigation. However, the corporate successor law will not impair an injured worker from receiving benefits under workers' compensation. This legislative remedy would simply limit a successor company's responsibility for the predecessor's torts to the total value of the predecessor's assets.

PRIOR LEGISLATIVE HISTORY:

A6025 of 2003-2004
A10725 of 2002

FISCAL IMPLICATIONS:

None

EFFECTIVE DATE:

This act shall take effect on the one hundred twentieth day after it shall have become a law.