

SECOND REGULAR SESSION

SENATE BILL NO. 1057

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CAUTHORN.

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TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 407, RSMo, by adding thereto five new sections relating to asbestos litigation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto five new sections, to be known as sections 407.1400, 407.1403, 407.1406, 407.1409 and 407.1415, to read as follows:

407.1400. As used in sections 407.1400 to 407.1415, the following words and phrases shall mean:

(1) "Asbestos claim", 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, including property damage caused by the installation, presence or removal of asbestos, the health effects of exposure to asbestos, including any claim for personal injury, death, mental or emotional injury, risk of disease or other injury or the costs of medical monitoring or surveillance. The term shall also include any claim made by or on behalf of any person exposed to asbestos or any representative, spouse, parent, child or other relative of any such person;

(2) "Successor asbestos-related liabilities", any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due, related in any way to asbestos claims, that were assumed or incurred by a domestic business corporation or foreign business corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related thereto, with or into another domestic

business corporation or foreign business corporation effected pursuant to the laws of this state or another jurisdiction or which are related in any way to asbestos claims based on the exercise of control or the ownership of stock of such corporation prior to such merger or consolidation. The term shall also include liabilities which, after the time of the merger or consolidation as to which the fair market value of total assets is determined for purposes of sections 407.1403 and 407.1406, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments or other discharges in this state or another jurisdiction;

(3) "Transferor", a domestic business corporation or foreign business corporation from which successor asbestos-related liabilities are assumed or incurred.

407.1403. 1. Except as provided in subsection 2 of this section, the cumulative successor asbestos-related liabilities of a domestic business corporation that was incorporated in this state prior to August 28, 2002, shall be limited to the fair market value of the total assets of the transferor determined as of the time of the merger or consolidation, and such corporation shall have no responsibility for successor asbestos-related liabilities in excess of such limitation.

2. If the transferor had 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 such earlier merger or consolidation, shall be substituted for the limitation set forth in subsection 1 of this section for purposes of determining the limitation of liability of a domestic business corporation.

407.1406. 1. Except as provided in subsection 2 of this section, the assets of a domestic business corporation that was incorporated in this state prior to August 28, 2002, shall be exempt from restraint, attachment or execution on judgments related to claims for successor asbestos-related liabilities if the cumulative amounts which, after the time of the merger or consolidation as to which the fair market value of total assets is determined for purposes of this subsection and section 407.1403, are paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments or other discharges of claims of asbestos-related liabilities exceed the fair market value of the total assets of the transferor, determined as of the time of the merger or consolidation.

2. If the transferor had 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 such earlier merger or consolidation, shall be substituted for the limitation

set forth in subsection 1 of this section for purposes of determining the extent of the exemption of the assets of a domestic business corporation.

407.1409. 1. A domestic business corporation may establish the fair market value of total assets through any method reasonable under the circumstances, including by reference to the going concern value of such assets or to the purchase price attributable to or paid for such assets in an arm's length transaction, or, in the absence of other readily available information from which fair market value can be determined, by reference to the value of such assets recorded on a balance sheet. Total assets shall include intangible assets. A showing by the domestic business corporation of a reasonable determination of the fair market value of total assets shall be prima facie evidence of their fair market value.

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

3. For the purpose of adjusting the limitations set forth in sections 407.1403 and 407.1406 to account for the passage of time, the fair market value of total assets at the time of a merger or consolidation shall be increased annually until the earlier of:

(1) The date of the settlement, judgment or other discharge to which the limitations in section 407.1403 or 407.1406 are being applied; or

(2) The date on which such adjusted fair market value is first exceeded by the cumulative amounts paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, after the time of the merger or consolidation as to which the fair market value of total assets is determined for purposes of sections 407.1403 and 407.1406 in connection with settlements, judgments or other discharges of the successor asbestos-related liabilities;

at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since such merger or consolidation, plus one percent, not compounded.

407.1415. 1. The limitations set forth in sections 407.1403 and 407.1406 shall apply to mergers or consolidations effected pursuant to the laws of this state or another jurisdiction consummated prior to August 28, 2002.

2. The limitations set forth in sections 407.1403 and 407.1406 shall apply to all asbestos claims, including existing asbestos claims, and all litigation, including existing litigation, and shall apply to successors of a domestic business corporation to which this section applies.

3. The limitations set forth in sections 407.1403 and 407.1406 shall not apply to

workers' compensation benefits paid by or on behalf of an employer to an employee pursuant to chapter 287, RSMo.

4. The limitations set forth in sections 407.1403 and 407.1406 shall not apply to any claim against a domestic business corporation that does not constitute a successor asbestos-related liability.

5. This section shall not apply to an insurance company as defined in chapter 447, RSMo.

6. The limitations set forth in sections 407.1403 and 407.1406 shall not apply to any obligations arising pursuant to chapter 295, RSMo.

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