

CIVIL PRACTICE AND REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING  
TO CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. In this chapter:

(1) "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, including:

(A) property damage caused by the installation, presence, or removal of asbestos;

(B) the health effects of exposure to asbestos, including any claim for:

(i) personal injury or death;

(ii) mental or emotional injury;

(iii) risk of disease or other injury; or

(iv) the costs of medical monitoring or surveillance; and

(C) any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person.

(2) "Corporation" means a corporation for profit, including:

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

(B) a foreign corporation organized under laws other than the laws of this state.

(3) "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, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or

the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Section 149.004, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor 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.

(4) "Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

(5) "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 17.01, eff. June 11, 2003.

Sec. 149.002. APPLICABILITY. (a) The limitations in Section 149.003 shall apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors, but in the latter case only to the extent of the limitation of liability applied under Section 149.003(b) and subject also to the limitations found in this chapter, including those in Subsection (b).

(b) The limitations in Section 149.003 shall not apply to:

(1) workers' compensation benefits paid by or on behalf of an employer to an employee under the Texas Workers' Compensation Act, Subtitle A, Title 5, Labor Code, or a comparable workers' compensation law of another jurisdiction;

(2) any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) an insurance corporation, as that term is used in the Insurance Code;

(4) any obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.), as amended, or under any collective bargaining agreement;

(5) a successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor;

(6) a contractual obligation existing as of the effective date of this chapter that was entered into with claimants or potential claimants or their counsel and which resolves asbestos claims or potential asbestos claims;

(7) any claim made against the estate of a debtor in a bankruptcy proceeding commenced prior to April 1, 2003, under the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) by or against such debtor, or against a bankruptcy trust established under 11 U.S.C. Section 524(g) or similar provisions of the United States Code in such a bankruptcy proceeding commenced prior to such date; or

(8) a successor asbestos-related liability arising from a claim brought under Chapter 95, a common law claim for premises liability, or a cause of action for premises liability, as applicable, but only if the successor owned or controlled the premise or premises at issue after the merger or consolidation.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 17.01, eff. June 11, 2003.

Sec. 149.003. LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. (a) Except as further limited in Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) 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 (a) for purposes of determining the limitation of liability of a corporation.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 17.01, eff. June 11, 2003.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (a) A corporation may establish the fair market value of total gross assets for the purpose of the limitations under Section 149.003 through any method reasonable under the circumstances, including:

(1) 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; or

(2) in the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

(c) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectable to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor). A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor 10 years or more before the enactment of this chapter shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

(d) The fair market value of total gross assets shall reflect no deduction for any liabilities arising from any asbestos

claim.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 17.01, eff. June 11, 2003.

Sec. 149.005. ADJUSTMENT. (a) Except as provided in Subsections (b), (c), and (d), the fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

(1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) one percent.

(b) The rate in Subsection (a) is not compounded.

(c) The adjustment of fair market value of total gross assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by Section [149.004\(c\)](#).

Added by Acts 2003, 78th Leg., ch. 204, Sec. 17.01, eff. June 11, 2003.

Sec. 149.006. SCOPE OF CHAPTER. The courts in this state shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 17.01, eff. June 11, 2003.