A bill for an act

relating to commerce; limiting successor corporation asbestos-related liabilities; proposing coding for new law in Minnesota Statutes, chapter 604A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[604A.36] LIMITATIONS OF ASBESTOS LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS.**

Subdivision 1. **Short title.** This section may be cited as the "Innocent Successor Asbestos-Related Liability Fairness Act."

Subd. 2. **Definitions.** (a) For the purposes of this section, the terms in paragraphs (b) to (f) have the meanings given them.

(b) "Asbestos claim" means a 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:

(1) the health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance;

(2) a claim made by or on behalf of a person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and

(3) a claim for damage or loss caused by the installation, presence, or removal of asbestos.

(c) "Corporation" means a business corporation, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than the laws of this state.

(d) "Innocent successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972, or is any of that successor corporation's successors.

(e) "Successor asbestos-related liabilities" means liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related to asbestos claims and 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 subdivision 5, 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.

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

Subd. 3. **Applicability.** (a) The limitations in subdivision 4 apply to an innocent successor corporation.

(b) The limitations of subdivision 4 do not apply to:

(1) workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of chapter 176, or a comparable workers' compensation law of another jurisdiction;

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

(3) an obligation under the National Labor Relations Act, United States Code, title 29, section 151, et seq., as amended, or under a collective bargaining agreement.

Subd. 4. **Measure of liabilities.** (a) Except as further limited in paragraph (b), the cumulative successor asbestos-related liabilities of an innocent successor 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 innocent successor corporation does not have 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 the

earlier merger or consolidation must be substituted for the limitation in paragraph (a) for purposes of determining the limitation of liability of an innocent successor corporation.

Subd. 5. **Establishing fair market value of total gross assets.** (a) An innocent successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under subdivision 4 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 arms-length transaction; or

(2) in the absence of other readily available information from which the 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) To the extent total gross assets include liability insurance that was issued to the transferor whose assets are being valued for purposes of this subdivision, the applicability, terms, conditions, and limits of the insurance is not affected by this section, and this section does not otherwise affect the rights and obligations of an insurer, transferor, or successor under an insurance contract and/or any related agreements including, without limitation, preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums or self-insured retentions, or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. A settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this section is determinative of the total coverage of the liability insurance to be included in the calculation of the transferor's total gross assets.

Subd. 6. **Adjustment.** (a) Except as provided in paragraphs (b) to (d), the fair market value of total gross assets at the time of the 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, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

(2) one percent.

(b) The rate found in paragraph (a) must not be compounded.

(c) The adjustment of the fair market value of total gross assets continues as provided in paragraph (a) until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on

behalf of the innocent successor 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 is applied to liability insurance that may be included in the definition of total gross assets by subdivision 5, paragraph (c).

Subd. 7. **Scope; application.** (a) The courts of this state shall construe the provisions of this section liberally with regard to innocent successors.

(b) This section applies to all asbestos claims filed against an innocent successor on or after the day following final enactment. This section also applies to any pending asbestos claims against an innocent successor in which trial has not commenced as of the day following final enactment, except that any provisions of these subdivisions that would be unconstitutional if applied retroactively must be applied prospectively.