

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at www.SourceWatch.org.

& MEETINGS

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Home → Model Legislation → Civil Justice ←

Successor Asbestos-Related Liability Fairness Act

Section 1. {Definitions}

A.) "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:

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

- a. personal injury or death;
- b. mental or emotional injury;
- c. risk of disease or other injury; or
- d. the costs of medical monitoring or surveillance, to the extent such claims are recognized under state law;

(2) 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; and

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

B.) "Corporation" means a corporation for profit, 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.

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

D.) "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 (as defined by this Act, as well as any claims for damage or loss caused by the installation, presence, or removal of asbestos) and 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 (including property damage 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 4, 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.

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

Section 2. {Applicability}

A.) The limitations in Section 3 of this Title 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 or which is any of that successor corporation's successors.

B.) The limitations in Section 3 of this Title shall not apply to:

- (1) workers' compensation benefits paid by or on behalf of an employer to an employee under this State's workers' compensation act 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; or
- (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.

Section 3. {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

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

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 or 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.

Section 4. {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 3 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 before the enactment of this title shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

Section 5. {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, 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; or

(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 first 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 subsection 4(c).

Section 6. {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.

Section 7. {Effective Date} This Act shall take effect on its date of enactment. The Act applies to all asbestos claims filed on or after the effective date. This Act also applies to any pending asbestos claims in which trial has not commenced as of the effective date.

Adopted by the Civil Justice Task Force at the Annual Meeting in July, 2004. Approved by the ALEC Board of Directors August, 2004.

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