SENATE DOCKET, NO. 1025 FILED ON: 1/20/2011

SENATE . . . . . No. 154

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to successor corporation asbestos-related liabilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Barry R. Finegold	
	☐ *[District]*
	☐

SENATE DOCKET, NO. 1025 FILED ON: 1/20/2011

SENATE . . . . . No. 154

By Mr. Finegold, petition (accompanied by bill, Senate, No. 154) of Finegold for legislation relative to successor corporation asbesos-related liabilities [Joint Committee on Economic Development and Emerging Technologies].

The Commonwealth of Massachusetts

An Act relative to successor corporation asbestos-related liabilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 11.01 of chapter 156D of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting before the definition of "Interests" the following definition:-

"Asbestos claim", a claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including all of the following:

(a) a claim related to the health effects of exposure to asbestos, including a claim related to any of the following: (1) personal injury or death; (2) mental or emotional injury; (3) increased risk of disease or other injury; (4) costs of medical monitoring or surveillance; or

(b) 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; or

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

SECTION 2. Section 11.01 of chapter 156D of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Share exchange" the following 2 definitions:-

"Successor", 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.

"Successor asbestos-related liability", any liability, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that is related to an asbestos claim and was assumed or incurred by a corporation

22 as a result of or in connection with (a) a merger or consolidation with or into another
23 corporation; or (b) the plan of merger or consolidation related to the merger or consolidation
24 with or into another corporation; or (c) exercise of control or ownership of the stock of the
25 corporation before the merger or consolidation with the corporation. Includes liability that, after
26 the time of the merger or consolidation for which the fair market value of total gross assets is to
27 be determined under section 4, was paid, discharged, or committed to be paid or discharged, by
28 or on behalf of the corporation, successor of the corporation, or transferor, in connection with a
29 settlement, judgment, or other discharge in this state or another jurisdiction.

30 SECTION 3. Section 11.01 of chapter 156D of the General Laws, as so appearing, is
31 hereby amended by inserting after the definition of "Survivor" the following definition:-

32 "Transferor", a corporation from which successor asbestos-related liability is or was
33 assumed or incurred.

34 SECTION 4. Chapter 156D of the General Laws is hereby amended by adding after
35 section 11.08 the following section:

36 Section 11.09.

37 (a) (1) The cumulative successor asbestos-related liabilities of a successor corporation are
38 limited to the fair market value of the total gross assets of the transferor determined as of the
39 time of the merger or consolidation. The successor corporation does not have responsibility for
40 any successor asbestos-related liabilities in excess of this limitation.

41 (2) If the transferor had assumed or incurred successor asbestos-related or liabilities in
42 connection with a prior merger or consolidation with a prior transferor, then the fair market value
43 of the total assets of the prior transferor determined as of the time of the earlier merger or
44 consolidation shall be substituted for the limitation in paragraph (1) for purposes of determining
45 the limitation of liability of a successor corporation.

46 (3) This subsection does not apply to the following:

47 (i) Workers' compensation benefits paid under chapter 152 or a comparable workers'
48 compensation law of another jurisdiction;

49 (ii) Any claim against a corporation that does not constitute a successor asbestos-
50 related liability;

51 (iii) Any obligation under 29 U.S.C. 151, et seq., or under any collective bargaining
52 agreement; or

53 (iv) A successor corporation that, after a merger or consolidation, continued in the
54 business of mining asbestos, in the business of selling or distributing asbestos fibers, or in the
55 business of manufacturing, distributing, removing, or installing asbestos-containing products

56 which were the same or substantially the same as those products previously manufactured,
57 distributed, removed, or installed by the transferor.

58 (b) (1) A successor corporation may establish the fair market value of total gross assets
59 for the purpose of the limitations under subsection (a) by any reasonable method, including any
60 of the following:

61 (i) By reference to the going concern value of the assets;

62 (ii) By reference to the purchase price attributable to or paid for the assets in an arms-
63 length transaction;

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

66 (2) Total gross assets include intangible assets.

67 (3) To the extent that total gross assets include any liability insurance that was issued to
68 the transferor whose assets are being valued for purposes of this section, the applicability, terms,
69 conditions and limits of such insurance shall not be affected by this section. This section also
70 does not affect the rights and obligations of an insurer, transferor or successor under any
71 insurance contract and/or any related agreements, including all of the following:

72 (i) A pre-enactment settlement resolving a coverage-related dispute;

73 (ii) The right of an insurer to seek payment for applicable deductibles, retrospective
74 premiums or self-insured retentions;

75 (iii) The right of an insurer to seek contribution from a successor for uninsured or self-
76 insured periods or periods where insurance is uncollectible or otherwise unavailable.

77 (4) Without limiting paragraph (3), to the extent that total gross assets include any
78 liability insurance, a settlement of a dispute concerning any such liability insurance coverage
79 entered into by a transferor or successor with the insurers of the transferor [before the effective
80 date of this act] shall be determinative of the total coverage of the liability insurance for
81 inclusion in the calculation of the transferor's total gross assets.

82 (c) (1) Except as provided in paragraphs (2), (3), and (4), the fair market value of total
83 gross assets at the time of the merger or consolidation shall increase annually at a rate equal to
84 the sum of the following:

85 (i) The weekly prime rate for the first week of each calendar year since the merger or
86 consolidation, as reported by the federal reserve board in federal reserve statistical release H. 15;
87 and

88 (ii) 1 per cent.

89 (2) The rate found in paragraph (1) may not be compounded.

90 (3) The adjustment of the fair market value of total gross assets shall continue as
91 provided in paragraph (1) until the date the adjusted value is first exceeded by the cumulative
92 amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of
93 the successor corporation or a predecessor or by or on behalf of a transferor after the time of the
94 merger or consolidation for which the fair market value of total gross assets is determined.

95 (4) No adjustment of the fair market value of total gross assets shall be applied to any
96 liability insurance that may be included in the definition of total gross assets under subsection
97 (c).

98 SECTION 5. This act shall apply to all asbestos claims filed against a successor on or
99 after the effective date of the act. This section also applies to any pending asbestos claims
100 against a successor in which trial has not commenced as the effective date of the act, except that
101 any provisions of these sections which would be unconstitutional if applied retroactively shall be
102 applied prospectively.