

SENATE BILL No. 359

By Committee on Judiciary

2-10

1 AN ACT enacting the successor corporation asbestos-related liability
2 fairness act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 7, and amendments thereto, shall be
6 known and may be cited as the successor corporation asbestos-related
7 liability fairness act.

8 Sec. 2. As used in the successor corporation asbestos-related liability
9 fairness act:

10 (a) "Asbestos claim" means the same as in K.S.A. 60-4901, and
11 amendments thereto. "Asbestos claim" also means any claim for damage
12 or loss caused by the installation, presence or removal of asbestos.

13 (b) "Corporation" means a corporation for profit, including a
14 domestic corporation organized under the laws of this state or a foreign
15 corporation organized under laws other than the laws of this state.

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

20 (d) "Successor asbestos-related liabilities" means any liabilities,
21 whether known or unknown, asserted or unasserted, absolute or
22 contingent, accrued or unaccrued, liquidated or unliquidated, or due or to
23 become due, which are related in any way to asbestos claims and were
24 assumed or incurred by a corporation as a result of or in connection with a
25 merger or consolidation, or the plan of merger or consolidation related to
26 the merger or consolidation with or into another corporation, or that are
27 related in any way to asbestos claims based on the exercise of control or
28 the ownership of stock of the corporation before the merger or
29 consolidation. The term includes liabilities that, after the time of the
30 merger or consolidation for which the fair market value of total gross
31 assets is determined under section 5, and amendments thereto, were or are
32 paid or otherwise discharged, or committed to be paid or otherwise
33 discharged, by or on behalf of the corporation, or by a successor of the
34 corporation, or by or on behalf of a transferor, in connection with
35 settlements, judgments or other discharges in this state or another
36 jurisdiction.

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

3 Sec. 3. (a) The limitations in section 4, and amendments thereto, shall
4 apply to any successor corporation. The limitations of section ~~3~~ 4, and
5 amendments thereto, shall not apply to:

6 (1) Workers' compensation benefits paid by or on behalf of an
7 employer to an employee under the provisions of chapter 44 of the Kansas
8 Statutes Annotated, and amendments thereto, or a comparable workers'
9 compensation law of another jurisdiction;

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

12 (3) any obligation under the national labor relations act, 29 U.S.C. §
13 151 et seq., or under any collective bargaining agreement; or

14 (4) a successor that, after a merger or consolidation, continued in the
15 business of mining asbestos or in the business of selling or distributing
16 asbestos fibers or in the business of manufacturing, distributing, removing
17 or installing asbestos-containing products which were the same or
18 substantially the same as those products previously manufactured,
19 distributed, removed, or installed by the transferor.

20 Sec. 4. (a) Except as further limited in subsection (b), the cumulative
21 successor asbestos-related liabilities of a successor corporation are limited to
22 the fair market value of the total gross assets of the transferor
23 determined as of the time of the merger or consolidation. The successor
24 corporation shall not have responsibility for successor asbestos-related
25 liabilities in excess of this limitation.

26 (b) If the transferor had assumed or incurred successor asbestos-
27 related liabilities in connection with a prior merger or consolidation with a
28 prior transferor, then the fair market value of the total assets of the prior
29 transferor determined as of the time of the earlier merger or consolidation
30 shall be substituted for the limitation set forth in subsection (a) for
31 purposes of determining the limitation of liability of a successor
32 corporation.

33 Sec. 5. (a) A successor corporation may establish the fair market
34 value of total gross assets for the purpose of the limitations under section
35 4, and amendments thereto, through any method reasonable under the
36 circumstances, including, but not limited to:

37 (1) By reference to the going concern value of the assets or to the
38 purchase price attributable to or paid for the assets in an arms-length
39 transaction; or

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

43 (b) Total gross assets include intangible assets.

1 (c) To the extent total gross assets include any liability insurance that
2 was issued to the transferor whose assets are being valued for purposes of
3 this section, the applicability, terms, conditions and limits of such
4 insurance shall not be affected by this section, nor shall this section
5 otherwise affect the rights and obligations of an insurer, transferor or
6 successor under any insurance contract or any related agreements,
7 including, without limitation, preenactment settlements resolving
8 coverage-related disputes, and the rights of an insurer to seek payment for
9 applicable deductibles, retrospective premiums or self-insured retentions
10 or to seek contribution from a successor for uninsured or self-insured
11 periods or periods where insurance is uncollectible or otherwise
12 unavailable. Without limiting the foregoing, to the extent total gross assets
13 include any such liability insurance, a settlement of a dispute concerning
14 any such liability insurance coverage entered into by a transferor or
15 successor with the insurers of the transferor before July 1, 2014, shall be
16 determinative of the total coverage of such liability insurance to be
17 included in the calculation of the transferor's total gross assets.

18 Sec. 6. (a) Except as provided in subsections (b), (c) and (d), the fair
19 market value of total gross assets at the time of the merger or consolidation
20 shall increase annually at a rate equal to the sum of:

21 (1) The prime rate as listed in the first edition of the wall street
22 journal published for each calendar year since the merger or consolidation,
23 unless the prime rate is not published in that edition of the wall street
24 journal, in which case any reasonable determination of the prime rate on
25 the first day of the year may be used; and

26 (2) one percent.

27 (b) The rate described in subsection (a) shall not be compounded.

28 (c) The adjustment of the fair market value of total gross assets shall
29 continue as provided in subsection (a) until the date the adjusted value is
30 first exceeded by the cumulative amounts of successor asbestos-related
31 liabilities paid or committed to be paid by or on behalf of the successor
32 corporation or a predecessor or by or on behalf of a transferor after the
33 time of the merger or consolidation for which the fair market value of total
34 gross assets is determined.

35 (d) No adjustment of the fair market value of total gross assets shall
36 be applied to any liability insurance that may be included in the definition
37 of total gross assets by subsection (c) of section 5, and amendments
38 thereto.

39 Sec. 7. (a) The courts of this state shall construe the provisions of the
40 successor corporation asbestos-related liability fairness act liberally with
41 regard to successors.

42 (b) The successor corporation asbestos-related liability fairness act
43 shall apply to all asbestos claims filed against a successor on or after July

1 1, 2014. The successor corporation asbestos-related liability fairness act
2 shall also apply to any pending asbestos claims against a successor in
3 which trial has not commenced as of July 1, 2014, except that any
4 provisions of these sections that would be unconstitutional if applied
5 retroactively shall be applied prospectively.

6 Sec. 8. This act shall take effect and be in force from and after its
7 publication in the statute book.