

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 742

By: Senator Irvin

For An Act To Be Entitled

AN ACT TO CREATE THE SUCCESSOR CORPORATION ASBESTOS-RELATED LIABILITY FAIRNESS ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE SUCCESSOR CORPORATION ASBESTOS-RELATED LIABILITY FAIRNESS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 16, Chapter 120, is amended to create an additional subchapter to read as follows:

Subchapter 6 – Successor Corporation Asbestos-Related Liability Fairness Act

16-120-601. Title.

This subchapter shall be known and may be cited as the “Successor Corporation Asbestos-Related Liability Fairness Act”.

16-120-602. Legislative findings.

The General Assembly finds that:

(1) Asbestos-related claims threaten the continued viability of uniquely situated companies that have never manufactured, sold, or distributed asbestos or asbestos products and are liable only as successor corporations;

(2) The viability of these businesses is threatened due solely to their status as successor corporations by merger or consolidation based on



actions taken prior to the 1972 adoption of asbestos regulations by the Occupational Safety and Health Administration;

(3) Over twenty (20) other states have enacted legislation similar to this act to provide limits on successor asbestos-related liabilities for innocent successors; and

(4) The public interest as a whole is best served by limiting the successor asbestos-related liabilities of innocent successors so that they may remain viable.

16-120-603. Definitions.

As used in this subchapter:

(1) "Asbestos claim" means any civil cause of action, wherever or whenever made, arising out of, based on, or in any way related to asbestos, including the health effects of exposure to asbestos or the installation, presence, or removal of asbestos, and includes a 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 for-profit 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;

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

(4)(A) "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, which are related in any way 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.

(B) "Successor asbestos-related liabilities" includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under § 16-120-604 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; and

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

16-120-604. Limit on successor asbestos-related liabilities.

(a) A successor is not liable for any asbestos claim when the successor's cumulative successor asbestos-related liabilities exceed the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation.

(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 shall be substituted for the limitation set forth in subsection (a) of this section.

(c) A successor does not have immunity under this section with respect to:

(1) Workers' compensation benefits paid by or on behalf of an employer to an employee under § 11-9-101 et seq. or a comparable workers' compensation law of another jurisdiction;

(2) A claim that does not constitute a successor asbestos-related liability;

(3) An obligation under the National Labor Relations Act, 29 U.S.C. § 151 et seq., as it existed on January 1, 2015, or under any collective bargaining agreement; or

(4) If the successor, 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.

16-120-605. Establishing fair market value of total gross assets.

(a) A successor may establish the fair market value of total gross assets for the purpose of § 16-120-604 through any method reasonable under the circumstances, including:

(1) By reference to the growing 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 the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets under subsection (a) of this section include intangible assets.

(c)(1) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of the insurance shall not be affected by this section nor shall this section otherwise affect the rights and obligations of an insurer, transferor, or successor under an insurance contract or any related agreements, including without limitation preenactment settlements resolving coverage-related disputes and the rights of an insurer to:

(A) Seek payment for:

(i) Applicable deductibles;

(ii) Retrospective premiums; or

(iii) Self-insured retentions; or

(B) Seek contribution from a successor for uninsured or self-insured periods, or periods where insurance is uncollectible or otherwise unavailable.

(2) Without limiting subdivision (c)(1)(A) of this section, to the extent total gross assets include any liability insurance, a settlement of a dispute concerning any liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this subchapter shall be determinative of the total coverage of the liability insurance to be included in the calculation of the transferor's total gross assets.

16-120-606. Adjustment.

(a) Except as provided in subsections (b)-(d) of this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase 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 (1%).

(b) The rate under subsection (a) of this section shall not be compounded.

(c) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (a) of this section 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 successor 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) An adjustment of the fair market value of total gross assets shall not be applied to liability insurance that may be included in the definition of total gross assets by § 16-120-605(c).