

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 742

5 By: Senator Irvin
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE SUCCESSOR CORPORATION ASBESTOS-
9 RELATED LIABILITY FAIRNESS ACT; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12
13 TO CREATE THE SUCCESSOR CORPORATION
14 ASBESTOS-RELATED LIABILITY FAIRNESS ACT.
15
16

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 16, Chapter 120, is amended to create
21 an additional subchapter to read as follows:
22

Subchapter 6 – Successor Corporation Asbestos-Related Liability Fairness Act

16-120-601. Title.

25 This subchapter shall be known and may be cited as the “Successor
26 Corporation Asbestos-Related Liability Fairness Act”.
27

16-120-602. Legislative findings.

30 The General Assembly finds that:

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

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



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

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

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

9
10 16-120-603. Definitions.

11 As used in this subchapter:

12 (1) "Asbestos claim" means any civil cause of action, wherever
13 or whenever made, arising out of, based on, or in any way related to
14 asbestos, including the health effects of exposure to asbestos or the
15 installation, presence, or removal of asbestos, and includes a claim made by
16 or on behalf of any person exposed to asbestos, or a representative, spouse,
17 parent, child, or other relative of the person;

18 (2) "Corporation" means a for-profit corporation, including a
19 domestic corporation organized under the laws of this state or a foreign
20 corporation organized under laws other than the laws of this state;

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

25 (4)(A) "Successor asbestos-related liabilities" means any
26 liabilities, whether known or unknown, asserted or unasserted, absolute or
27 contingent, accrued or unaccrued, liquidated or unliquidated, or due or to
28 become due, which are related in any way to asbestos claims and were assumed
29 or incurred by a corporation as a result of or in connection with a merger or
30 consolidation, or the plan of merger or consolidation related to the merger
31 or consolidation with or into another corporation, or that are related in any
32 way to asbestos claims based on the exercise of control or the ownership of
33 stock of the corporation before the merger or consolidation.

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

1 or are paid or otherwise discharged, or committed to be paid or otherwise
2 discharged, by or on behalf of the corporation, or by a successor of the
3 corporation, or by or on behalf of a transferor, in connection with
4 settlements, judgments, or other discharges in this state or another
5 jurisdiction; and

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

8
9 16-120-604. Limit on successor asbestos-related liabilities.

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

14 (b) If the transferor had assumed or incurred successor asbestos-
15 related liabilities in connection with a prior merger or consolidation with a
16 prior transferor, then the fair market value of the total assets of the prior
17 transferor determined as of the time of the earlier merger or consolidation
18 shall be substituted for the limitation set forth in subsection (a) of this
19 section.

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

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

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

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

30 (4) If the successor, after a merger or consolidation, continued
31 in the business of mining asbestos or in the business of selling or
32 distributing asbestos fibers or in the business of manufacturing,
33 distributing, removing, or installing asbestos-containing products which were
34 the same or substantially the same as those products previously manufactured,
35 distributed, removed, or installed by the transferor.

36

1 16-120-605. Establishing fair market value of total gross assets.

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

5 (1) By reference to the growing concern value of the assets or
6 to the purchase price attributable to or paid for the assets in an arm's
7 length transaction; or

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

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

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

21 (A) Seek payment for:

22 (i) Applicable deductibles;

23 (ii) Retrospective premiums; or

24 (iii) Self-insured retentions; or

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

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

35
36 16-120-606. Adjustment.

1 (a) Except as provided in subsections (b)-(d) of this section, the
2 fair market value of total gross assets at the time of the merger or
3 consolidation shall increase annually at a rate equal to the sum of:

4 (1) The prime rate as listed in the first edition of the Wall
5 Street Journal published for each calendar year since the merger or
6 consolidation, unless the prime rate is not published in that edition of the
7 Wall Street Journal, in which case any reasonable determination of the prime
8 rate on the first day of the year may be used; and

9 (2) One percent (1%).

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

12 (c) The adjustment of the fair market value of total gross assets
13 shall continue as provided in subsection (a) of this section until the date
14 the adjusted value is first exceeded by the cumulative amounts of successor
15 asbestos-related liabilities paid or committed to be paid by or on behalf of
16 the successor or a predecessor or by or on behalf of a transferor after the
17 time of the merger or consolidation for which the fair market value of total
18 gross assets is determined.

19 (d) An adjustment of the fair market value of total gross assets shall
20 not be applied to liability insurance that may be included in the definition
21 of total gross assets by § 16-120-605(c).

22
23
24
25
26
27
28
29
30
31
32
33
34
35
36