

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Successor corporation asbestos related liability act.

Sponsored by: Representative(s) Pedersen

A BILL

for

1 AN ACT relating to civil actions; providing limitations on
2 liability for asbestos claims against successor
3 corporations; and providing for an effective date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

6

7 **Section 1.** W.S. 1-1-131 through 1-1-137 are created
8 to read:

9

10 **1-1-131. Short title.**

11

12 This act shall be known and may be cited as the "Successor
13 Corporation Asbestos-Related Liability Fairness Act".

14

1 **1-1-132. Definitions.**

2

3 (a) As used in this act:

4

5 (i) "Asbestos claim" means any claim, wherever
6 or whenever made, for damages, losses, indemnification,
7 contribution or other relief arising out of, based on or in
8 any way related to asbestos, including:

9

10 (A) The health effects of exposure to
11 asbestos, including a claim for personal injury or death,
12 mental or emotional injury, risk of disease or other
13 injury, or the costs of medical monitoring or surveillance;

14

15 (B) Any claim made by or on behalf of any
16 person exposed to asbestos, or a representative, spouse,
17 parent, child or other relative of the person; and

18

19 (C) Any claim for damage or loss caused by
20 the installation, presence or removal of asbestos;

21

22 (ii) "Corporation" means a corporation for
23 profit, including a domestic corporation organized under

1 the laws of this state or a foreign corporation organized
2 under laws other than the laws of this state;

3

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

9

10 (iv) "Successor asbestos-related liabilities"
11 means any liability, whether known or unknown, asserted or
12 unasserted, absolute or contingent, accrued or unaccrued,
13 liquidated or unliquidated or due or to become due, which
14 are related to asbestos claims and were assumed or incurred
15 by a corporation as a result of or in connection with a
16 merger or consolidation or the plan of merger or
17 consolidation related to the merger or consolidation with
18 or into another corporation, or that are related in any way
19 to asbestos claims based on the exercise of control or the
20 ownership of stock of the corporation before the merger or
21 consolidation. The term includes liabilities that, after
22 the time of the merger or consolidation for which the fair
23 market value of total gross assets is determined under W.S.

1 1-1-135, were or are paid or otherwise discharged, or
2 committed to be paid or otherwise discharged, by or on
3 behalf of the corporation or by a successor of the
4 corporation or by or on behalf of a transferor, in
5 connection with settlements, judgments or other discharges
6 in this state or another jurisdiction;

7

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

11

12 **1-1-133. Applicability.**

13

14 (a) The limitations in W.S. 1-1-134 shall apply to
15 any successor corporation.

16

17 (b) The limitations of W.S. 1-1-134 shall not apply
18 to:

19

20 (i) Workers' compensation benefits paid by or on
21 behalf of an employer to an employee under the provisions
22 of Wyoming Statutes, Title 27, Chapter 14 or a comparable
23 workers' compensation law of another jurisdiction;

1

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

4

5 (iii) Any obligation under the National Labor
6 Relations Act, 29 U.S.C. Section 151, et seq., as amended,
7 or under any collective bargaining agreement; or

8

9 (iv) A successor that, after a merger or
10 consolidation, continued in the business of mining asbestos
11 or in the business of selling or distributing asbestos
12 fibers or in the business of manufacturing, distributing,
13 removing or installing asbestos-containing products which
14 were the same or substantially the same as those products
15 previously manufactured, distributed, removed or installed
16 by the transferor.

17

18 **1-1-134. Limitations on successor asbestos-related**
19 **liabilities.**

20

21 (a) Except as further limited in subsection (b) of
22 this section, the cumulative successor asbestos-related
23 liabilities of a successor corporation are limited to the

1 fair market value of the total gross assets of the
2 transferor determined as of the time of the merger or
3 consolidation. The successor corporation shall not have
4 responsibility for successor asbestos-related liabilities
5 in excess of this limitation.

6

7 (b) If the transferor had assumed or incurred
8 successor asbestos-related or liabilities in connection
9 with a prior merger or consolidation with a prior
10 transferor, then the fair market value of the total assets
11 of the prior transferor determined as of the time of the
12 earlier merger or consolidation shall be substituted for
13 the limitation set forth in subsection (a) of this section
14 for purposes of determining the limitation of liability of
15 a successor corporation.

16

17 **1-1-135. Establishing fair market value of total**
18 **assets.**

19

20 (a) A successor corporation may establish the fair
21 market value of total gross assets for the purpose of the
22 limitations under W.S. 1-1-134 through any method
23 reasonable under the circumstances, including:

1

2 (i) By reference to the going concern value of
3 the assets or to the purchase price attributable to or paid
4 for the assets in an arms-length transaction; or

5

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

10

11 (b) Total gross assets include intangible assets.

12

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

1 or self-insured retentions or to seek contribution from a
2 successor for uninsured or self-insured periods or periods
3 where insurance is uncollectible or otherwise unavailable.
4 Without limiting the foregoing, to the extent total gross
5 assets include any such liability insurance, a settlement
6 of a dispute concerning any such liability insurance
7 coverage entered into by a transferor or successor with the
8 insurers of the transferor before July 1, 2011 shall be
9 determinative of the total coverage of such liability
10 insurance to be included in the calculation of the
11 transferor's total gross assets.

12

13 **1-1-136. Adjustment.**

14

15 (a) Except as provided in subsections (b) through (d)
16 of this section, the fair market value of total gross
17 assets at the time of the merger or consolidation shall
18 increase annually at a rate equal to the sum of:

19

20 (i) The prime rate as listed in the first
21 edition of the Wall Street Journal published for each
22 calendar year since the merger or consolidation, unless the
23 prime rate is not published in that edition of the Wall

1 Street Journal, in which case any reasonable determination
2 of the prime rate on the first day of the year may be used;
3 and

4

5 (ii) One percent (1%).

6

7 (b) The rate found in subsection (a) of this section
8 shall not be compounded.

9

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

19

20 (d) No adjustment of the fair market value of total
21 gross assets shall be applied to any liability insurance
22 that may be included in the definition of total gross
23 assets by W.S. 1-1-135(c).

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2 **1-1-137. Scope of chapter.**

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4 (a) The courts of this state shall construe the
5 provisions of this act liberally with regard to successors.

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7 (b) This act shall apply to all asbestos claims filed
8 against a successor on or after July 1, 2011. The act
9 shall also apply to any pending asbestos claims against a
10 successor in which trial has not commenced as of July 1,
11 2011, except that any provisions of these sections which
12 would be unconstitutional if applied retroactively shall be
13 applied prospectively.

14

15 **Section 2.** This act is effective July 1, 2011.

16

17

(END)