HOUSE BILL NO. HB0110

Successor Corporation Asbestos-Related Liability Act-2.

Sponsored by: Joint Minerals, Business and Economic Development Interim Committee

A BILL

for

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

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

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

1-1-131. Short title.

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

1-1-132. Definitions.

(a) As used in this act:

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

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

(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; and

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

(ii) "Corporation" means a corporation for profit, 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;

(iii) "Successor" means 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;

(iv) "Successor asbestos-related liabilities" means any liability, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due, which is related to asbestos claims and was 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 is 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. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under W.S. 1-1-135, 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;

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

1-1-133. Applicability.

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

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

(i) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of Wyoming statutes, title 27, chapter 14 or a comparable workers' compensation law of another jurisdiction;

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

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

(iv) A successor that, 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; or

(v) Any claim against a corporation that was filed in a court of competent jurisdiction prior to the effective date of this act.

1-1-134. Limitations on successor asbestos-related liabilities.

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

(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 for purposes of determining the limitation of liability of a successor corporation.

1-1-135. Establishing fair market value of total assets.

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

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

(ii) 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 include intangible assets.

(c) 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 such 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 any insurance contract or any related agreements, including, without limitation, preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before July 1, 2011 shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

1-1-136. Adjustment.

(a) Except as provided in subsections (b) through (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:

(i) 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

(ii) One percent (1%).

(b) The rate found in 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 corporation 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) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the definition of total gross assets by W.S. 1-1-135(c).

1-1-137. Scope of act.

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

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

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

(END)