

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Successor Corporation Asbestos-Related Liability Act-2.

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

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:

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

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

1

2

1-1-132. Definitions.

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(a) As used in this act:

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(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:

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11

(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;

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16

(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

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20

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

22

1 (ii) "Corporation" means a corporation for
2 profit, including a domestic corporation organized under
3 the laws of this state or a foreign corporation organized
4 under laws other than the laws of this state;

5

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

11

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

1 the time of the merger or consolidation for which the fair
2 market value of total gross assets is determined under W.S.
3 1-1-135, were or are paid or otherwise discharged, or
4 committed to be paid or otherwise discharged, by or on
5 behalf of the corporation or by a successor of the
6 corporation or by or on behalf of a transferor, in
7 connection with settlements, judgments or other discharges
8 in this state or another jurisdiction;

9

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

13

14 **1-1-133. Applicability.**

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

18

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

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22 (i) Workers' compensation benefits paid by or on
23 behalf of an employer to an employee under the provisions

1 of Wyoming Statutes, Title 27, Chapter 14 or a comparable
2 workers' compensation law of another jurisdiction;

3

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

6

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

10

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

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20 **1-1-134. Limitations on successor asbestos-related**
21 **liabilities.**

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

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

19
20 **1-1-135. Establishing fair market value of total**
21 **assets.**

22

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

5
6 (i) By reference to the going concern value of
7 the assets or to the purchase price attributable to or paid
8 for the assets in an arms-length transaction; or

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

14
15 (b) Total gross assets include intangible assets.

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17 (c) To the extent total gross assets include any
18 liability insurance that was issued to the transferor whose
19 assets are being valued for purposes of this section the
20 applicability, terms, conditions and limits of such
21 insurance shall not be affected by this section, nor shall
22 this section otherwise affect the rights and obligations of
23 an insurer, transferor or successor under any insurance

1 contract or any related agreements, including, without
2 limitation, preenactment settlements resolving
3 coverage-related disputes, and the rights of an insurer to
4 seek payment for applicable deductibles, retrospective
5 premiums or self-insured retentions or to seek contribution
6 from a successor for uninsured or self-insured periods or
7 periods where insurance is uncollectible or otherwise
8 unavailable. Without limiting the foregoing, to the extent
9 total gross assets include any such liability insurance, a
10 settlement of a dispute concerning any such liability
11 insurance coverage entered into by a transferor or
12 successor with the insurers of the transferor before July
13 1, 2011 shall be determinative of the total coverage of
14 such liability insurance to be included in the calculation
15 of the transferor's total gross assets.

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17 **1-1-136. Adjustment.**

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

23

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

8
9 (ii) One percent (1%).

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

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

23

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

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6 **1-1-137. Scope of act.**

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

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11 (b) This act shall apply to all asbestos claims filed
12 against a successor on or after July 1, 2011. The act
13 shall also apply to any pending asbestos claims against a
14 successor in which trial has not commenced as of July 1,
15 2011, except that any provisions of these sections which
16 would be unconstitutional if applied retroactively shall be
17 applied prospectively.

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

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(END)