

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 376

BY BUSINESS COMMITTEE

AN ACT

RELATING TO SUCCESSOR CORPORATIONS; AMENDING TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 19, TITLE 30, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE APPLICABILITY, TO PROVIDE LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES, TO ESTABLISH A FAIR MARKET VALUE OF TOTAL GROSS ASSETS, TO PROVIDE FOR ADJUSTMENT AND TO PROVIDE SCOPE AND APPLICATION.

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

SECTION 1. That Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 19, Title 30, Idaho Code, and to read as follows:

CHAPTER 19

SUCCESSOR CORPORATION ASBESTOS-RELATED LIABILITY FAIRNESS ACT

30-1901. SHORT TITLE. This act shall be known and may be cited as the "Successor Corporation Asbestos-Related Liability Fairness Act."

30-1902. DEFINITIONS. As used in this section, the following terms shall mean:

(1) "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:

(i) Personal injury or death;

(ii) Mental or emotional injury;

(iii) Risk of disease or other injury; or

(iv) 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.

(2) "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.

(3) "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.

(4) "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,

1 that are related in any way to asbestos claims and were assumed or incurred by
 2 a corporation as a result of or in connection with a merger or consolidation,
 3 or the plan of merger or consolidation related to the merger or consolidation
 4 with or into another corporation, or that are related in any way to asbestos
 5 claims based on the exercise of control or the ownership of stock of the cor-
 6 poration before the merger or consolidation. The term includes liabilities
 7 that, after the time of the merger or consolidation for which the fair mar-
 8 ket value of total gross assets is determined pursuant to section 30-1905,
 9 Idaho Code, were or are paid or otherwise discharged, or committed to be paid
 10 or otherwise discharged, by or on behalf of the corporation, or by a succes-
 11 sor of the corporation, or by or on behalf of a transferor, in connection with
 12 settlements, judgments, or other discharges in this state or another juris-
 13 diction.

14 (5) "Transferor" means a corporation from which the successor as-
 15 bestos-related liabilities are or were assumed or incurred.

16 30-1903. APPLICABILITY. (1) The limitations in section 30-1904,
 17 Idaho Code, shall apply to any successor corporation.

18 (2) The limitations of section 30-1904, Idaho Code, shall not apply to:

19 (a) Worker's compensation benefits paid by, or on behalf of, an em-
 20 ployer to an employee under the provisions of title 72, Idaho Code, or a
 21 comparable worker's compensation law of another jurisdiction;

22 (b) Any claim against a corporation that does not constitute a succes-
 23 sor asbestos-related liability;

24 (c) Any obligation under the national labor relations act, 29 U.S.C.
 25 section 151 et seq., as amended, or under any collective bargaining
 26 agreement; or

27 (d) A successor that, after a merger or consolidation, continued in the
 28 business of mining asbestos or in the business of selling or distribut-
 29 ing asbestos fibers or in the business of manufacturing, distributing,
 30 removing, or installing asbestos-containing products that were the
 31 same as those products previously manufactured, distributed, removed,
 32 or installed by the transferor.

33 30-1904. LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILI-
 34 TIES. (1) Except as further limited in subsection (2) of this section, the
 35 cumulative successor asbestos-related liabilities of a successor corpo-
 36 ration are limited to the fair market value of the total gross assets of
 37 the transferor determined as of the time of the merger or consolidation.
 38 The successor corporation does not have responsibility for successor as-
 39 bestos-related liabilities in excess of this limitation.

40 (2) If the transferor has assumed or incurred successor asbestos-re-
 41 lated liabilities in connection with a prior merger or consolidation with a
 42 prior transferor, then the fair market value of the total assets of the prior
 43 transferor determined as of the time of the earlier merger or consolidation
 44 shall be substituted for the limitation set forth in subsection (1) of this
 45 section for purposes of determining the limitation of liability of a succes-
 46 sor corporation.

1 30-1905. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (1) A
 2 successor corporation may establish the fair market value of total gross as-
 3 sets for the purpose of the limitations under section 30-1904, Idaho Code,
 4 through any method reasonable under the circumstances, including:

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

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

11 (2) Total gross assets include intangible assets.

12 (3) To the extent total gross assets include any liability insurance
 13 that was issued to the transferor whose assets are being valued for purposes
 14 of this section, the applicability, terms, conditions and limits of such in-
 15 surance shall not be affected by this statute, nor shall this statute oth-
 16 erwise affect the rights and obligations of an insurer, transferor or suc-
 17 cessor under any insurance contract and/or any related agreements, includ-
 18 ing, without limitation, preenactment settlements resolving coverage-re-
 19 lated disputes, and the rights of an insurer to seek payment for applicable
 20 deductibles, retrospective premiums or self-insured retentions or to seek
 21 contribution from a successor for uninsured or self-insured periods or pe-
 22 riods where insurance is uncollectible or otherwise unavailable. Without
 23 limiting the foregoing, to the extent total gross assets include any such li-
 24 ability insurance, a settlement of a dispute concerning any such liability
 25 insurance coverage entered into by a transferor or successor with the insur-
 26 ers of the transferor before the effective date of this act shall be deter-
 27 minative of the total coverage of such liability insurance to be included in
 28 the calculation of the transferor's total gross assets.

29 30-1906. ADJUSTMENT. (1) Except as provided in subsections (2)
 30 through (4) of this section, the fair market value of total gross assets at
 31 the time of the merger or consolidation shall increase annually at a rate
 32 equal to the sum of:

33 (a) The prime rate as listed in the first edition of the Wall Street
 34 Journal published for each calendar year since the merger or consolida-
 35 tion, unless the prime rate is not published in that edition of the Wall
 36 Street Journal, in which case any reasonable determination of the prime
 37 rate on the first day of the year may be used; and

38 (b) One percent (1%).

39 (2) The rate enumerated in subsection (1) of this section shall not be
 40 compounded.

41 (3) The adjustment of the fair market value of total gross assets shall
 42 continue as provided in subsection (1) of this section until the date the
 43 adjusted value is first exceeded by the cumulative amounts of successor as-
 44 bestos-related liabilities paid or committed to be paid by, or on behalf of,
 45 the successor corporation or a predecessor or by, or on behalf of, a trans-
 46 feror after the time of the merger or consolidation for which the fair market
 47 value of total gross assets is determined.

1 (4) No adjustment of the fair market value of total gross assets shall
2 be applied to any liability insurance that may be included in the definition
3 of total gross assets by subsection (3) of section 30-1905, Idaho Code.

4 30-1907. SCOPE OF CHAPTER -- APPLICATION. (1) The courts of this state
5 shall construe the provisions of this act liberally with regard to succes-
6 sors.

7 (2) This act shall apply to all asbestos claims filed against a succes-
8 sor on or after the effective date of this act and to any pending asbestos
9 claims against a successor in which trial has not commenced as of the ef-
10 fective date of this act, except that any provisions of these sections
11 which would be unconstitutional if applied retroactively shall be applied
12 prospectively.