

1 **SUCCESSOR CORPORATION ASBESTOS-RELATED**

2 **LIABILITY ACT**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: Gregory H. Hughes

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Judicial Code to address successor corporation asbestos-related
11 liability.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ enacts the Successor Corporation Asbestos-Related Liability Act, including:
 - 15 • defining terms;
 - 16 • addressing the applicability of the limitations on liability to successors and
17 certain claims;
 - 18 • limiting liability of a successor for successor asbestos-related liability;
 - 19 • providing for how to establish fair market value of total gross assets of a
20 transferor;
 - 21 • providing for adjustments to the fair market value of total gross assets; and
 - 22 • addressing the scope of the part.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **78B-4-601**, Utah Code Annotated 1953

- 30 **78B-4-602**, Utah Code Annotated 1953
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- 33 **78B-4-605**, Utah Code Annotated 1953
- 34 **78B-4-606**, Utah Code Annotated 1953
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37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **78B-4-601** is enacted to read:

39 **Part 6. Successor Corporation Asbestos-Related Liability Act**

40 **78B-4-601. Title.**

41 This part is known as the "Successor Corporation Asbestos-Related Liability Act."

42 Section 2. Section **78B-4-602** is enacted to read:

43 **78B-4-602. Definitions.**

44 As used in this part:

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

48 (a) the health effects of exposure to asbestos, including a claim for:

49 (i) personal injury or death;

50 (ii) mental or emotional injury;

51 (iii) risk of disease or other injury; or

52 (iv) the costs of medical monitoring or surveillance;

53 (b) a claim made by or on behalf of a person exposed to asbestos, or a representative,
54 spouse, parent, child, or other relative of the person; and

55 (c) a claim for damage or loss caused by the installation, presence, or removal of
56 asbestos.

57 (2) "Corporation" means a corporation for profit, including a domestic corporation

58 organized under the laws of this state or a foreign corporation organized under laws other than
59 this state.

60 (3) "Successor" means a corporation that:

61 (a) (i) assumes or incurs or has assumed or incurred successor asbestos-related liability;

62 (ii) is the successor corporation after a merger or consolidation; and

63 (iii) became a successor before January 1, 1972; or

64 (b) is a successor corporation of a corporation described in Subsection (3)(a).

65 (4) (a) "Successor asbestos-related liability" means liability:

66 (i) whether known or unknown, asserted or unasserted, absolute or contingent, accrued
67 or unaccrued, liquidated or unliquidated, or due or to become due;

68 (ii) that is related in any way to an asbestos claim; and

69 (iii) (A) is assumed or incurred by a corporation as a result of or in connection with a
70 merger or consolidation, or the plan of merger or consolidation related to the merger or
71 consolidation with or into another corporation; or

72 (B) that is related in any way to an asbestos claim based on the exercise of control or
73 the ownership of stock of the corporation before the merger or consolidation.

74 (b) "Successor asbestos-related liability" includes liability that, after the time of the
75 merger or consolidation for which the fair market value of total gross assets is determined
76 under Section 78B-4-605, was or is paid or otherwise discharged, or committed to be paid or
77 otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation,
78 or by or on behalf of a transferor, in connection with a settlement, judgment, or other discharge
79 in this state or another jurisdiction.

80 (5) "Transferor" means a corporation from which successor asbestos-related liability is
81 or was assumed or incurred.

82 Section 3. Section **78B-4-603** is enacted to read:

83 **78B-4-603. Applicability.**

84 (1) The limitations in Section 78B-4-604 apply to a successor.

85 (2) The limitations in Section 78B-4-604 do not apply to:

86 (a) workers' compensation benefits paid by or on behalf of an employer to an employee
87 under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah
88 Occupational Disease Act, or a comparable workers' compensation law of another jurisdiction;

89 (b) a claim against a corporation that does not constitute a successor asbestos-related
90 liability;

91 (c) an obligation under the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq.,
92 as amended, or under a collective bargaining agreement; or

93 (d) a successor that, after a merger or consolidation, continued in the business of:

94 (i) mining asbestos;

95 (ii) selling or distributing asbestos fibers; or

96 (iii) manufacturing, distributing, removing, or installing asbestos-containing products
97 that were the same or substantially the same as those products previously manufactured,
98 distributed, removed, or installed by the transferor.

99 Section 4. Section **78B-4-604** is enacted to read:

100 **78B-4-604. Measure of liabilities.**

101 (1) Except as further limited in Subsection (2), the cumulative successor
102 asbestos-related liability of a successor is limited to the fair market value of the total gross
103 assets of the transferor determined as of the time of the merger or consolidation. A successor
104 does not have responsibility for successor asbestos-related liability in excess of this limitation.

105 (2) If the transferor had assumed or incurred successor asbestos-related liability in
106 connection with a prior merger or consolidation with a prior transferor, the fair market value of
107 the total assets of the prior transferor determined as of the time of the earlier merger or
108 consolidation shall be substituted for the limitation set forth in Subsection (1) for purposes of
109 determining the limitation of liability of a successor.

110 Section 5. Section **78B-4-605** is enacted to read:

111 **78B-4-605. Establishing fair market value of total gross assets.**

112 (1) A successor may establish the fair market value of total gross assets for the purpose
113 of the limitations under Section 78B-4-604 through any method reasonable under the

114 circumstances, including:

115 (a) by reference to the going concern value of the assets or to the purchase price
116 attributable to or paid for the assets in an arms-length transaction; or

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

119 (2) Total gross assets include intangible assets.

120 (3) (a) To the extent total gross assets include any liability insurance that was issued to
121 the transferor whose assets are being valued for purposes of this section, the applicability,
122 terms, conditions, and limits of the insurance may not be affected by this section, nor shall this
123 section otherwise affect the rights and obligations of an insurer, transferor, or successor under
124 any insurance contract or related agreement including:

125 (i) preenactment settlements resolving coverage-related disputes; and

126 (ii) the rights of an insurer to seek payment of applicable deductibles, retrospective
127 premiums, or self-insured retentions or to seek contribution from a successor for uninsured or
128 self-insured periods or periods when insurance is uncollectible or otherwise unavailable.

129 (b) Without limiting Subsection (3)(a), to the extent total gross assets include liability
130 insurance, a settlement, or a dispute concerning the liability insurance coverage entered into by
131 a transferor or successor with the insurers of the transferor before May 8, 2012, shall be
132 determinative of the total coverage of the liability insurance to be included in the calculation of
133 the transferor's total gross assets.

134 Section 6. Section **78B-4-606** is enacted to read:

135 **78B-4-606. Adjustment.**

136 (1) Subject to Subsections (2) through (4), the fair market value of total gross assets at
137 the time of the merger or consolidation shall increase annually at a rate equal to the sum of:

138 (a) the prime rate as listed in the first edition of the Wall Street Journal published for
139 each calendar year since the merger or consolidation, unless the prime rate is not published in
140 that edition of the Wall Street Journal, in which case any reasonable determination of the prime
141 rate on the first day of the calendar year may be used; and

142 (b) 1%.

143 (2) The rate found in Subsection (1) may not be compounded.

144 (3) The adjustment of the fair market value of total gross assets shall continue as
145 provided in Subsection (1) until the date the adjusted value is first exceeded by the cumulative
146 amounts of successor asbestos-related liability paid or committed to be paid by or on behalf of
147 the successor corporation or a predecessor or by or on behalf of a transferor after the time of
148 the merger or consolidation for which the fair market value of total gross assets is determined.

149 (4) An adjustment of the fair market value of total gross assets may not be applied to
150 any liability insurance that may be included in the definition of total gross assets by Subsection
151 78B-4-605(3).

152 Section 7. Section **78B-4-607** is enacted to read:

153 **78B-4-607. Scope.**

154 (1) Courts of this state shall construe this part liberally with regard to successors.

155 (2) This part shall apply to an asbestos claim filed against a successor on or after May
156 8, 2012. This part shall apply to a pending asbestos claim against a successor in which trial has
157 not commenced as of May 8, 2012, except that any provision of this part that would be
158 unconstitutional if applied retroactively shall be applied prospectively.