

AN ACT

ENTITLED, An Act to limit asbestos-related liabilities for certain successor corporations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act mean:

- (1) "Corporation," any 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;
- (2) "Successor," any corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities and that became a successor before January 1, 1972, or any successors of that corporation;
- (3) "Transferor," any corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Section 2. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, an asbestos claim is 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:

- (1) 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;
- (2) 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
- (3) Any claim for damage or loss caused by the installation, presence, or removal of asbestos.

Section 3. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, successor asbestos-related liabilities are any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due to become due, which are related to asbestos claims and were 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 are 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, pursuant to section 6 of this Act, 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.

Section 4. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

The cumulative successor asbestos-related liabilities of any 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 does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

Section 5. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

If the transferor had assumed or incurred successor asbestos-related liabilities or 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 section 4 of this Act for purposes of determining the limitation of liability of a successor corporation.

Section 6. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

Any successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under sections 4 and 5 of this Act through any method reasonable under the circumstances, including:

- (1) By reference to the going concern value of the assets or to the purchase price attributable to, or paid for, the assets in arms-length transactions; or
- (2) 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.

Total gross assets include intangible assets. 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 are not affected by this section, nor does this section otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract or any related agreements, including pre-enactment 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 successor with the insurers of the transferor before the date of enactment of this Act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

Section 7. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

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 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, plus one percent. This rate may not be compounded. The adjustment of the fair market value of total gross assets shall continue as provided in 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.

No adjustment of the fair market value of total gross assets may be applied to any liability insurance that may be included in the definition of total gross assets by section 6 of this Act.

Section 8. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of sections 4 and 5 of this Act do not apply to any of the following:

- (1) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of Title 62, or a comparable workers' compensation law of another jurisdiction;
- (2) Any claim against a corporation that does not constitute a successor asbestos-related liability;
- (3) Any obligation under the National Labor Relations Act, 29 U.S.C. section 151, et seq., or under any collective bargaining agreement; or
- (4) 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.

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1136

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1136  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office
this \_\_\_\_ day of \_\_\_\_\_ ,
20\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby
approved this \_\_\_\_\_ day of
\_\_\_\_\_, A.D., 20\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State