

Successor Corporation Asbestos-Related Liability Fairness Act; SB 359

SB 359 enacts the Successor Corporation Asbestos-Related Liability Fairness Act, which provides that 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.

“Successor” is defined to include a corporation that has assumed or incurred successor asbestos-related liabilities that became a successor before January 1, 1972, or is any of that successor corporation’s successors. “Asbestos claim,” “corporation,” “successor asbestos-related liabilities,” and “transferor” also are defined.

The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of the limitation established by the bill. If the transferor has assumed or incurred successor asbestos-related liability in connection with a prior merger or consolidation with a prior transfer, the limitation of liability of a successor corporation is the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation. The bill sets forth possible methods for establishing fair market value of the total gross assets. The fair market value of total gross assets at the time of the merger or consolidation increases annually as specified in the bill.

The bill provides these limitations apply to any successor corporation; however, the limitations do not apply to:

- Workers compensation benefits paid by or on behalf of an employer to an employee pursuant to Kansas law or a comparable law of another jurisdiction;
- Any claim against a corporation that does not constitute a successor asbestos-related liability;
- Any obligation under the federal National Labor Relations Act or under any collective bargaining agreement; or
- 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 that were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

The bill applies to all asbestos claims filed against a successor on or after July 1, 2014, and any pending asbestos claims against a successor in which trial has not commenced as of that date, except where retroactive application would be unconstitutional. Kansas courts are required to construe its provisions liberally with regard to successors.