

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 14

BY SENATORS TRUMP, BOSO, FERNS, LEONHARDT,

TAKUBO AND BLAIR

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §55-71-1, §55-71-2, §55-71-3, §55-71-4, §55-71-5, §55-71-6 and §55-71-7, all
 3 relating to providing limits on successor corporation asbestos-related liabilities.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §55-71-1, §55-71-2, §55-71-3, §55-71-4, §55-71-5, §55-71-6 and §55-71-7, all to
 3 read as follows:

ARTICLE 71. SUCCESSOR ASBESTOS-RELATED LIABILITY.

§55-71-1. Findings and purpose.

1 (a) The West Virginia Legislature finds that:

2 (1) Asbestos-related claims threaten the continued viability of uniquely situated companies
 3 that have never manufactured, sold, or distributed asbestos or asbestos products and are liable
 4 only as successor corporations.

5 (2) The viability of these businesses is threatened due solely to their status as successor
 6 corporations by merger or consolidation based on actions taken prior to the 1972 adoption of
 7 asbestos regulations by the Occupational Safety and Health Administration.

8 (3) Over twenty other states have enacted legislation similar to this article to provide limits
 9 on asbestos-related liabilities for innocent successors.

10 (4) The public interest as a whole is best served by providing relief to innocent successors
 11 so that they may remain viable.

12 (b) The purpose of this article is to limit the cumulative recovery by all asbestos claimants
 13 from innocent successors.

§55-71-2. Definitions.

1 As used in this article:

2 (a) "Asbestos action" means any claim, wherever or whenever made, for damages, losses,
 3 indemnification, contribution, or other relief arising out of, based on, or in any way related to

4 asbestos, including any of the following:

5 (1) The health effects of exposure to asbestos, including a claim for personal injury or
6 death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring
7 or surveillance.

8 (2) Any claim made by or on behalf of any person exposed to asbestos or a representative,
9 spouse, parent, child, or other relative of the person.

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

12 (b) "Corporation" means any corporation established under either domestic or foreign
13 charter and includes a corporate subsidiary and any business entity in which a corporation
14 participates or is a stockholder, a partner, or a joint venture.

15 (c) "Successor" means a corporation that assumes or incurs or has assumed or incurred
16 successor asbestos-related liabilities through operation of law, including, but not limited to, a
17 merger or consolidation or plan of merger or consolidation related to such consolidation or merger
18 or by appointment as administrator or as trustee in bankruptcy, debtor in possession, liquidation,
19 or receivership and that became a successor before January 1, 1972. Successor includes any of
20 that successor corporation's successors.

21 (d) "Successor asbestos-related liability" means any liabilities, whether known or
22 unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or
23 unliquidated, or due or to become due, which are related in any way to asbestos actions and were
24 assumed or incurred by a corporation as a result of or in connection with a merger or
25 consolidation, or the plan of merger or consolidation related to the merger or consolidation with
26 or into another corporation, or that are related in any way to asbestos actions based on the
27 exercise of control or the ownership of stock of the corporation before the merger or consolidation.

28 The term includes liabilities that, after the time of the merger or consolidation for which the fair
29 market value of total gross assets is determined under section five of this article, were or are paid

30 or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the
31 corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection
32 with settlements, judgments, or other discharges in this state or another jurisdiction;

33 (e) "Transferor" means a corporation from which successor asbestos-related liabilities are
34 or were assumed or incurred.

§55-71-3. Applicability.

1 The limitations in section four of this article apply to any successor but do not apply to any
2 of the following:

3 (1) Workers' compensation benefits paid by or on behalf of an employer to an employee
4 under the provisions of chapter twenty-three of this code, or a comparable workers' compensation
5 law of another jurisdiction.

6 (2) Any claim against a corporation that does not constitute a successor asbestos-related
7 liability.

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

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

§55-71-4.Limitations on successor asbestos-related liabilities.

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

5 (b) If the transferor had assumed or incurred successor asbestos-related or liabilities in

6 connection with a prior merger or consolidation with a prior transferor, then the fair market value
7 of the total assets of the prior transferor determined as of the time of the earlier merger or
8 consolidation shall be substituted for the limitation set forth in subsection (a) for purposes of
9 determining the limitation of liability of a successor corporation.

§55-71-5. Establishing fair market value of total gross assets.

1 (a) A successor may establish the fair market value of total gross assets for the purpose
2 of the limitations under section four of this article through any method reasonable under the
3 circumstances, including:

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

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

8 (b) Total gross assets include intangible assets.

9 (c) To the extent total gross assets include any liability insurance that was issued to the
10 transferor whose assets are being valued for purposes of this section, the applicability, terms,
11 conditions and limits of such insurance are not affected by this statute, nor does this statute
12 otherwise affect the rights and obligations of an insurer, transferor or successor under any
13 insurance contract and/or any related agreements, including, without limitation, preenactment
14 settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for
15 applicable deductibles, retrospective premiums or self-insured retentions or to seek contribution
16 from a successor for uninsured or self-insured periods or periods where insurance is uncollectible
17 or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include
18 any such liability insurance, a settlement of a dispute concerning any such liability insurance
19 coverage entered into by a transferor or successor with the insurers of the transferor before the
20 effective date of this article shall be determinative of the total coverage of such liability insurance
21 to be included in the calculation of the transferor's total gross assets.

§55-71-6. Adjustment.

1 (a) Except as provided in subsections (b), (c) and (d), the fair market value of total gross
2 assets at the time of the merger or consolidation shall increase annually at a rate equal to the
3 sum of:

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

8 (2) One percent.

9 (b) The rate found in subsection (a) of this section may not be compounded.

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

15 (d) No adjustment of the fair market value of total gross assets may be applied to any
16 liability insurance that may be included in the definition of total gross assets by subsection (c) of
17 section five of this article.

§55-71-7. Scope of article; application.

1 (a) This article shall be liberally construed with regard to successors.

2 (b) This article applies to all asbestos claims filed against a successor on or after the
3 effective date of this article. The article also applies to any pending asbestos claims against a
4 successor in which trial has not commenced as of the effective date, except that any provisions
5 of this article that would be unconstitutional if applied retroactively shall be applied prospectively.

NOTE: The purpose of this bill is to limit successor corporation asbestos-related liabilities.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.