

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

## LEGISLATIVE BILL 763

FINAL READING

Introduced by Mello, 5; Coash, 27; Cornett, 45; Flood, 19;  
Lautenbaugh, 18; McGill, 26; Rogert, 16; Council, 11;  
Christensen, 44.

Read first time January 06, 2010

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to asbestos-related liabilities; to adopt the
- 2 Successor Asbestos-Related Liability Act.
- 3 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Sections 1 to 7 of this act shall be known and  
2                   may be cited as the Successor Asbestos-Related Liability Act.

3                   Sec. 2. For purposes of the Successor Asbestos-Related  
4                   Liability Act:

5                   (1) Asbestos claim means any claim, wherever or whenever  
6                   made, for damages, losses, indemnification, contribution, or other  
7                   relief arising out of, based on, or in any way related to asbestos,  
8                   including:

9                   (a) Any claim involving the health effects of exposure to  
10                  asbestos, including a claim for personal injury or death, mental or  
11                  emotional injury, risk of disease or other injury, or the costs of  
12                  medical monitoring or surveillance;

13                  (b) Any claim made by or on behalf of any person exposed  
14                  to asbestos, or a representative, spouse, parent, child, or other  
15                  relative of the person; and

16                  (c) Any claim for damage or loss caused by the  
17                  installation, presence, or removal of asbestos;

18                  (2) Corporation means a corporation for profit, including  
19                  a domestic corporation organized under the laws of this state or  
20                  a foreign corporation organized under laws other than the laws of  
21                  this state;

22                  (3) Successor asbestos-related liabilities means  
23                  liabilities, whether known or unknown, asserted or unasserted,  
24                  absolute or contingent, accrued or unaccrued, liquidated or  
25                  unliquidated, or due or to become due, that are related to asbestos

1       claims and were assumed or incurred by a corporation as a result  
2       of or in connection with a merger or consolidation, or the plan  
3       of merger or consolidation related to the merger or consolidation  
4       with or into another corporation, or that are related in any way to  
5       asbestos claims based on the exercise of control or the ownership  
6       of stock of the corporation before the merger or consolidation.  
7       Successor asbestos-related liabilities includes liabilities that,  
8       after the time of the merger or consolidation for which the fair  
9       market value of total gross assets is determined under section 5 of  
10      this act, were or are paid or otherwise discharged, or committed  
11      to be paid or otherwise discharged, by or on behalf of the  
12      corporation, or by a successor corporation, or by or on behalf of  
13      a transferor, in connection with settlements, judgments, or other  
14      discharges in this state or another jurisdiction;

15            (4) Successor corporation means a corporation that  
16      assumes or incurs or has assumed or incurred successor  
17      asbestos-related liabilities that is a successor and became a  
18      successor before January 1, 1972, or is any of that successor  
19      corporation's successors; and

20            (5) Transferor means a corporation from which successor  
21      asbestos-related liabilities are or were assumed or incurred.

22            Sec. 3. (1) The limitations in section 4 of this act  
23      shall apply to any successor corporation.

24            (2) The limitations in section 4 of this act shall not  
25      apply to:

1                 (a) Workers' compensation benefits paid by or on behalf  
2         of an employer to an employee under the Nebraska Workers'  
3         Compensation Act or a comparable workers' compensation law of  
4         another jurisdiction;

5                 (b) Any claim against a successor corporation that does  
6         not constitute a successor asbestos-related liability;

7                 (c) Any obligation under the National Labor Relations  
8         Act, 29 U.S.C. 151, et seq., as amended, or under any  
9         collective-bargaining agreement; or

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

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

24                 (2) If the transferor had assumed or incurred successor  
25         asbestos-related liabilities in connection with a prior merger

1       or consolidation with a prior transferor, then the fair market  
2       value of the total gross assets of the prior transferor determined  
3       as of the time of the earlier merger or consolidation shall be  
4       substituted for the limitation in subsection (1) of this section  
5       for purposes of determining the limitation of liability of a  
6       successor corporation.

7               Sec. 5. (1) A successor corporation may establish the  
8       fair market value of total gross assets for the purpose of  
9       the limitations under section 4 of this act through any method  
10      reasonable under the circumstances, including:

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

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

17               (2) Total gross assets include intangible assets.

18               (3) To the extent total gross assets include any  
19       liability insurance that was issued to the transferor whose assets  
20       are being valued for purposes of this section, the applicability,  
21       terms, conditions, and limits of such insurance shall not be  
22       affected by this section, nor shall this section otherwise affect  
23       the rights and obligations of an insurer, transferor, or successor  
24       corporation under any insurance contract or any related agreements,  
25       including, without limitation, preenactment settlements resolving

1       coverage-related disputes and the rights of an insurer to seek  
2       payment for applicable deductibles, retrospective premiums, or  
3       self-insured retentions or to seek contribution from a successor  
4       corporation for uninsured or self-insured periods or periods  
5       when insurance is uncollectible or otherwise unavailable. Without  
6       limiting the foregoing, to the extent total gross assets include  
7       such liability insurance, a settlement of a dispute concerning any  
8       such liability insurance coverage entered into by a transferor or  
9       successor corporation with the insurers of the transferor before  
10      the effective date of this act shall be determinative of the  
11      total coverage of such liability insurance to be included in the  
12      calculation of the transferor's total gross assets.

13           Sec. 6. (1) Except as provided in subsections (2) through  
14       (4) of this section, the fair market value of total gross assets at  
15       the time of the merger or consolidation shall increase annually at  
16       a rate equal to the sum of:

17               (a) The prime rate as listed in the first edition of  
18       the Wall Street Journal published for each calendar year since the  
19       merger or consolidation, unless the prime rate is not published  
20       in that edition of the Wall Street Journal, in which case any  
21       reasonable determination of the prime rate on the first day of the  
22       year may be used; and

23               (b) One percent.

24               (2) The rate found in subsection (1) of this section  
25       shall not be compounded.

1                 (3) The adjustment of the fair market value of total  
2         gross assets shall continue as provided in subsection (1) of this  
3         section until the date the adjusted value is first exceeded by  
4         the cumulative amounts of successor asbestos-related liabilities  
5         paid or committed to be paid by or on behalf of the successor  
6         corporation or a predecessor or by or on behalf of a transferor  
7         after the time of the merger or consolidation for which the fair  
8         market value of total gross assets is being determined.

9                 (4) No adjustment of the fair market value of total gross  
10         assets shall be applied to any liability insurance that is included  
11         in total gross assets under subsection (3) of section 5 of this  
12         act.

13                 Sec. 7. (1) The courts of this state shall construe  
14         the provisions of the Successor Asbestos-Related Liability Act  
15         liberally with regard to successor corporations.

16                 (2) The act shall apply to all asbestos claims filed  
17         against a successor corporation on or after the effective date of  
18         this act. The act also shall apply to any pending asbestos claims  
19         against a successor corporation in which trial has not commenced  
20         as of the effective date of this act, except that any provisions  
21         of the act which would be unconstitutional if applied retroactively  
22         shall be applied prospectively only.