SB 427 - AS AMENDED BY THE SENATE

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2018 SESSION

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SENATE BILL ***427***

AN ACT limiting the liability of successor corporations for asbestos-related claims.

SPONSORS: Sen. Gannon, Dist 23; Sen. Daniels, Dist 11; Sen. Bradley, Dist 3; Sen. Innis, Dist 24; Sen. Carson, Dist 14; Sen. D'Allesandro, Dist 20; Rep. Packard, Rock. 5; Rep. Ulery, Hills. 37

COMMITTEE: Commerce

ANALYSIS

This bill limits the liability of successor corporations for asbestos-related claims to the fair market value of the total gross assets of the transferor at the time of merger or consolidation. This bill also provides methods for establishing the fair market value of the transferor's total gross assets.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT limiting the liability of successor corporations for asbestos-related claims.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The New Hampshire general court finds that:

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

II. The viability of these businesses is threatened due solely to their status as successor corporations by merger or consolidation that occurred prior to January 1, 1972. In 1972, the Occupational Safety and Health Administration within the United States Department of Labor first promulgated rules establishing exposure limits in an attempt to protect employees against asbestos.

III. Twenty-five other states have enacted legislation similar to this chapter to provide limits on asbestos-related liabilities for innocent successors because this liability has created an overpowering public necessity to provide an immediate, remedial, legislative solution.

IV. The viability of these innocent successor companies is an important public interest as solvent companies provide direct and indirect employment opportunities and contribute to a sustainable workforce.

V. The purpose of this chapter is to balance the rights of those who have suffered asbestos-related injuries with the interests of innocent successor companies that, through merger or consolidation, became liable solely as successor companies and did not themselves manufacture asbestos containing products. In doing so, this article provides a mechanism for those who suffer asbestos-related injuries to recover from innocent successor corporations while at the same time limiting the cumulative recovery by all asbestos claimants from innocent successors without impairing their substantive rights.

2 New Chapter; Successor Corporation Asbestos-Related Liability Fairness Act. Amend RSA by inserting after chapter 507-G the following new chapter:

CHAPTER 507-H

SUCCESSOR CORPORATION ASBESTOS-RELATED

LIABILITY FAIRNESS ACT

507-H:1 Definitions. As used in this chapter:

I. "Asbestos claim" means 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 any of the following:

(a) The health effects of exposure to asbestos;

(b) 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

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

II. "Corporation" means a 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.

III. "Successor" means a corporation that assumes or incurs, or has assumed or incurred successor asbestos-related liabilities before January 1, 1972, or any of such successor corporation's successors.

IV. "Successor asbestos-related liability" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due, which are related in any way to asbestos claims that 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 under RSA 507-H:4, 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.

V. "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

507-H:2 Application of Limitations.

I. The limitations in RSA 507-H:3 shall apply to any successor corporation.

II. The limitations of RSA 507-H:3 shall not apply to:

(a) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of RSA 281-A or a comparable workers' compensation law of another jurisdiction;

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

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

(d) 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.

507-H:3 Limitations on Cumulative Successor Asbestos-related Liabilities.

I. Except as provided in paragraph II, 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. No successor corporation shall have responsibility for successor asbestos-related liabilities in excess of this limitation.

II. If the transferor had assumed or incurred successor asbestos-related 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 in paragraph I for purposes of determining the limitation of liability of a successor corporation.

507-H:4 Establishing Fair Market Value of Total Gross Assets.

I. As used in this section, total gross assets include intangible assets.

II. A successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under RSA 507-H:3 through any method reasonable under the circumstances, including:

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

(b) 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.

III. 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 the insurance policy shall not be affected by this section, and this section shall not otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract or any related agreements, including, without limitation, preenactment 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 liability coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this chapter shall be determinative of the total coverage of the liability insurance to be included in the calculation of the transferor's total gross assets.

507-H:5 Adjustment.

I. Except as otherwise provided in this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate of one percent in excess 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 calendar year may be used.

II. The rate calculated under paragraph I shall not be compounded.

III. The adjustment of the fair market value of total gross assets shall continue as provided in paragraph I 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, 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.

IV. No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the calculation of total gross assets by RSA 507-H:4, III.

507-H:6 Scope of Act; Application.

I. This chapter shall be liberally construed with regard to successors.

II. This chapter shall apply to all asbestos claims filed against a successor on or after the effective date of this act. The chapter shall also apply to any pending asbestos claims against a successor in which trial has not commenced as of the effective date, except that any provisions of this act that would be unconstitutional if applied retroactively shall be applied prospectively.

3 Effective Date. This act shall take effect upon its passage.