

1 AN ACT relating to successor corporation asbestos-related liabilities.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
4 READ AS FOLLOWS:

5 *Sections 1 to 7 of this Act shall be known and may be cited as the Successor*
6 *Corporation Asbestos-Related Liability Fairness Act.*

7 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
8 READ AS FOLLOWS:

9 *As used in Sections 1 to 7 of this Act:*

10 *(1) "Asbestos claim" means any claim, wherever or whenever made, for damages,*
11 *losses, indemnification, contribution, or other relief arising out of, based on, or*
12 *in any way related to asbestos, including:*

13 *(a) The health effects of exposure to asbestos, including a claim for personal*
14 *injury or death, mental or emotional injury, risk of disease or other injury,*
15 *or the costs of medical monitoring or surveillance;*

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

18 *(c) Any claim for damage or loss caused by the installation, presence, or*
19 *removal of asbestos;*

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

23 *(3) "Successor" means a corporation that assumes or incurs or has assumed or*
24 *incurred successor asbestos-related liabilities before January 1, 1972, or any of*
25 *that successor corporation's successors;*

26 *(4) (a) "Successor asbestos-related liabilities" means any liabilities, whether*
27 *known or unknown, asserted or unasserted, absolute or contingent, accrued*

1 or unaccrued, liquidated, or unliquidated, or due or to become due, which
 2 are related in any way to asbestos claims and were assumed or incurred by a
 3 corporation as a result of or in connection with a merger or consolidation,
 4 or the plan of merger or consolidation related to the merger or
 5 consolidation with or into another corporation, or that are related in any
 6 way to asbestos claims based on the exercise of control or the ownership of
 7 stock of the corporation before the merger or consolidation.

8 (b) The term includes liabilities that, after the time of the merger or
 9 consolidation for which the fair market value of total gross assets is
 10 determined under Section 5 of this Act, were or are paid or otherwise
 11 discharged, or committed to be paid or otherwise discharged, by or on
 12 behalf of the corporation, or by a successor of the corporation, or by or on
 13 behalf of a transferor, in connection with settlements, judgments, or other
 14 discharges in the Commonwealth or another jurisdiction; and

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

17 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
 18 READ AS FOLLOWS:

19 (1) The limitations in Section 4 of this Act shall apply to any successor corporation.

20 (2) The limitations in Section 4 of this Act shall not apply to:

21 (a) Workers' compensation benefits paid by or on behalf of an employer to an
 22 employee under KRS Chapter 342, or a comparable workers' compensation
 23 law of another jurisdiction;

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

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

1 (d) A successor that, after a merger or consolidation, continued in the business of
2 mining asbestos or in the business of selling or distributing asbestos fibers or in
3 the business of manufacturing, distributing, removing, or installing asbestos-
4 containing products which were the same or substantially the same as those
5 products previously manufactured, distributed, removed, or installed by the
6 transferor.

7 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
8 READ AS FOLLOWS:

9 (1) Except as provided in subsection (2) of this section, the cumulative successor
10 asbestos-related liabilities of a successor corporation shall be limited to the fair
11 market value of the total gross assets of the transferor determined as of the time
12 of the merger or consolidation. The successor corporation shall not have
13 responsibility for successor asbestos-related liabilities in excess of this limitation.

14 (2) If the transferor assumed or incurred successor asbestos-related liabilities in
15 connection with a prior merger or consolidation with a prior transferor, then the
16 fair market value of the total assets of the prior transferor determined as of the
17 time of the earlier merger or consolidation shall be substituted for the limitation
18 set forth in subsection (1) of this section for the purpose of determining the
19 limitation of liability of a successor corporation.

20 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
21 READ AS FOLLOWS:

22 (1) As used in this section, total gross assets include intangible assets.

23 (2) A successor corporation may establish the fair market value of total gross assets
24 for the purpose of the limitations under Section 4 of this Act through any method
25 reasonable under the circumstances, including:

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

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

4 **(3) (a) To the extent total gross assets include any liability insurance that was**
5 **issued to the transferor whose assets are being valued for purposes of this**
6 **section, the applicability, terms, conditions, and limits of the insurance**
7 **policy shall not be affected by this section, and this section shall not**
8 **otherwise affect the rights and obligations of an insurer, transferor, or**
9 **successor under any insurance contract or any related agreements,**
10 **including without limitation preenactment settlements resolving coverage-**
11 **related disputes, and the rights of an insurer to seek payment for applicable**
12 **deductibles, retrospective premiums, or self-insured retentions, or to seek**
13 **contribution from a successor for uninsured or self-insured periods or**
14 **periods where insurance is uncollectible or otherwise unavailable.**

15 **(b) Subject to paragraph (a) of this subsection, to the extent total gross assets**
16 **include any liability insurance, a settlement of a dispute concerning any**
17 **liability coverage entered into by a transferor or successor with the insurers**
18 **of the transferor before the effective date of this Act shall be determinative**
19 **of the total coverage of the liability insurance to be included in the**
20 **calculation of the transferor's total gross assets.**

21 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
22 READ AS FOLLOWS:

23 **(1) Except as provided in subsections (2), (3), and (4) of this section, the fair market**
24 **value of total gross assets at the time of the merger or consolidation shall**
25 **increase annually at a rate of one percent (1%) in excess of the prime rate as**
26 **listed in the first edition of the Wall Street Journal published for each calendar**
27 **year since the merger or consolidation, unless the prime rate is not published in**

1 that edition of the Wall Street Journal, in which case any reasonable
2 determination of the prime rate on the first day of the calendar year may be used.

3 (2) The rate calculated under subsection (1) of this section shall not be compounded.

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

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

13 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) Sections 1 to 7 of this Act shall be construed liberally with regard to successors.

16 (2) Sections 1 to 7 of this Act shall apply to all asbestos claims filed against a
17 successor on or after the effective date of this Act. Sections 1 to 7 of this Act shall
18 also apply to any pending asbestos claims against a successor in which trial has
19 not commenced as of the effective date of this Act, except that any provisions of
20 these sections that would be unconstitutional if applied retroactively shall be
21 applied prospectively.