An Act

(1ST EXTRAORDINARY SESSION)
ENROLLED SENATE
BILL NO. 15X

By: Bingman, Sykes, Jolley and Shortey of the Senate

and

Shannon, Stiles, Wright and Ritze of the House

An Act relating to innocent successor asbestos-related liability; repealing 76 O.S. 2011, Sections 72, 73, 74, 75, 76, 77, 78 and 79, which relate to the Innocent Successor Asbestos-Related Liability Fairness Act; creating the Innocent Successor Asbestos-Related Liability Fairness Act; providing short title; defining terms; establishing limitations on successor asbestos-related liabilities; providing method for establishing fair market value of gross assets for certain purposes; providing for adjustment of fair market value of certain assets; construing provisions; stating applicability of act; providing for codification; and declaring an emergency.

SUBJECT: Innocent successor asbestos-related liability

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. REPEALER 76 O.S. 2011, Sections 72, 73, 74, 75, 76, 77, 78 and 79, are hereby repealed.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 102 of Title 76, unless there is created a duplication in numbering, reads as follows:

SHORT TITLE. This act shall be known and may be cited as the "Innocent Successor Asbestos-Related Liability Fairness Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103 of Title 76, unless there is created a duplication in numbering, reads as follows:

DEFINITIONS. As used in the Innocent Successor Asbestos-Related Liability Fairness Act:

1. "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:

a. the health effects of exposure to asbestos, including any claim for:

(1) personal injury or death,

(2) mental or emotional injury,

(3) risk of disease or other injury, or

(4) the costs of medical monitoring or surveillance,

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;

2. "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;

3. "Innocent successor" means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities that is a successor and became a successor before

January 1, 1972, or is any of that successor corporation's successors, and that after a merger or consolidation did not continue in the business of mining asbestos, 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;

4. "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related to asbestos claims and 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 pursuant to Section 6 of this act, 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; and

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 104 of Title 76, unless there is created a duplication in numbering, reads as follows:

APPLICABILITY. A. The limitations in Section 5 of this act shall apply to any innocent successor corporation.

B. The limitations in Section 5 of this act shall not apply to:

1. Workers' compensation benefits paid by or on behalf of an employer to an employee under this state's Workers' Compensation Act or a comparable workers' compensation law of another jurisdiction;

2. Any claim against a corporation that does not constitute a successor asbestos-related liability; or

3. Any obligations under the National Labor Relations Act, 29 U.S.C., Section 151 et seq., as amended, or under any collective bargaining agreement.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105 of Title 76, unless there is created a duplication in numbering, reads as follows:

LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. A. Except as further limited in subsection B of this section, the cumulative successor asbestos-related liabilities of an innocent 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. The innocent successor corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

B. 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 such earlier merger or consolidation, shall be substituted for the limitation set forth in subsection A of this section for purposes of determining the limitation of liability of an innocent successor corporation.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 106 of Title 76, unless there is created a duplication in numbering, reads as follows:

ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. A. An innocent successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under Section 5 of this act through any method reasonable under the circumstances, including:

1. By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

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

B. Total gross assets include intangible assets.

C. To the extent total gross assets include any liability insurance issued to the transferor whose assets are being valued for the purposes of this section, the applicability, terms, conditions, and limits of such insurance shall not be affected by this act, nor shall the Innocent Successor Asbestos-Related Liability Fairness Act otherwise affect the rights and obligations of a transferor, successor, or insurer under any insurance contract and/or any related agreements, including, without limitation, rights and obligations under preenactment settlements between a transferor or successor and its insurers resolving liability insurance coverage, 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 such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of the Innocent Successor Asbestos-Related Liability Fairness Act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 107 of Title 76, unless there is created a duplication in numbering, reads as follows:

ADJUSTMENT. A. Except as provided in subsections B, C and D of this section, the fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

1. 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 year may be used; and

2. One percent (1%).

B. The rate provided for in subsection A of this section shall not be compounded.

C. The adjustment of fair market value of total gross assets continues as provided under subsection A of this section 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 innocent successor corporation or 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.

D. No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the definition of total gross assets by subsection C of Section 6 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 108 of Title 76, unless there is created a duplication in numbering, reads as follows:

SCOPE OF ACT. The courts of this state shall construe the provisions of the Innocent Successor Asbestos-Related Liability Fairness Act liberally with regard to innocent successors. Nothing in this act shall be construed to limit the liability of the transferor, except to the extent the transferor is or becomes a successor.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 109 of Title 76, unless there is created a duplication in numbering, reads as follows:

EFFECTIVE DATE. The Innocent Successor Asbestos-Related Liability Fairness Act shall apply to all asbestos claims filed against an innocent successor on or after the effective date of the Innocent Successor Asbestos-Related Liability Fairness Act. The Innocent Successor Asbestos-Related Liability Fairness Act shall also apply to any pending asbestos claims against an innocent successor in which trial has not commenced as of the effective date of the Innocent Successor Asbestos-Related Liability Fairness Act, except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 5th day of September, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 9th day of September, 2013.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 9th day of September, 20 13, at 5:05 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 10th day of September, 20 13, at 4:31 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 10th day of September, 20 13, at 4:47 o'clock P M.

By: Chris Dennis