

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Thoreson

1 A BILL for an Act to create and enact chapter 32-46 of the North Dakota Century Code, relating
2 to successor corporation asbestos-related liabilities.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 32-46 of the North Dakota Century Code is created and enacted
5 as follows:

6 **32-46-01. Definitions.**

- 7 1. "Asbestos claim", any claim, wherever made, for damages, losses, indemnification,
8 contribution, or other relief arising out of, based on, or in any way related to
9 asbestos, including:
- 10 a. The health effects of exposure to asbestos, including a claim for personal
11 injury or death, mental or emotional injury, risk of disease or other injury, or
12 the costs of medical monitoring or surveillance;
- 13 b. Any claim made by or on behalf of any person exposed to asbestos, or a
14 representative, spouse, parent, child, or other relative of the person; and
- 15 c. Any claim for damage or loss caused by the installation, presence, or removal
16 of asbestos;
- 17 2. "Corporation", a corporation for profit, including a domestic corporation organized
18 under the laws of this state or a foreign corporation organized under laws other
19 than the laws of this state;
- 20 3. "Innocent successor", a corporation that assumes or incurs or has assumed or
21 incurred successor asbestos-related liabilities that is a successor and became a
22 successor before January 1, 1972, or is any of that successor corporation's
23 successors;

- 1 4. "Successor asbestos-related liabilities", any liability, whether known or unknown,
2 asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated
3 or unliquidated, or due or to become due, which are related to asbestos claims and
4 were assumed or incurred by a corporation as a result of or in connection with a
5 merger or consolidation, or the plan of merger or consolidation related to the
6 merger or consolidation with or into another corporation, or that are related in any
7 way to asbestos claims based on the exercise of control or the ownership of stock
8 of the corporation before the merger or consolidation. The term includes liabilities
9 that, after the time of the merger or consolidation for which the fair market value of
10 total gross assets is determined under 32-46-05, were or are paid or otherwise
11 discharged, or committed to be paid or otherwise discharged, or by or on behalf of
12 a transferor, in connection with settlements, judgments, or other discharges in this
13 state or another jurisdiction;
14 5. "Transferor", a corporation from which successor asbestos-related liabilities are or
15 were assumed or incurred.

16 **32-46-02. Applicability.**

- 17 1. The limitations in 32-46-04 shall apply to any innocent successor corporation.
18 2. The limitations of 32-46-04 shall not apply to:
19 a. Workers' compensation benefits paid by or on behalf of an employer to an
20 employee under the provisions of title 62, or a comparable workers'
21 compensation law of another jurisdiction;
22 b. Any claim against a corporation that does not constitute a successor
23 asbestos-related liability; or
24 c. Any obligation under the National Labor Relations Act, 29 U.S.C. Section 151,
25 et seq., as amended, or under any collective bargaining agreement.

26 **32-46-03. Measure of liabilities.**

- 27 1. Except as further limited in subsection 2, the cumulative successor
28 asbestos-related liabilities of an innocent successor corporation are limited to the
29 fair market value of the total gross assets of the transferor determined as of the
30 time of the merger or consolidation. The innocent successor corporation does not

1 have responsibility for successor asbestos-related liabilities in excess of this
2 limitation.

- 3 2. If the transferor had assumed or incurred successor asbestos-related or liabilities
4 in connection with a prior merger or consolidation with a prior transferor, then the
5 fair market value of the total assets of the prior transferor determined as of the time
6 of the earlier merger or consolidation shall be substituted for the limitation set forth
7 in subsection 1 for purposes of determining the limitation of liability of an innocent
8 successor corporation.

9 **32-46-04. Establishing fair market value of total gross assets.**

- 10 1. An innocent successor corporation may establish the fair market value of total
11 gross assets for the purpose of the limitations under 36-42-04 through any method
12 reasonable under the circumstances, including:
- 13 a. By reference to the going concern value of the assets or to the purchase price
14 attributable to or paid for the assets in an arms-length transaction; or
- 15 b. In the absence of other readily available information from which the fair
16 market value can be determined, by reference to the value of the assets
17 recorded on a balance sheet.
- 18 2. Total gross assets include intangible assets.
- 19 3. To the extent total gross assets include any liability insurance that was issued to
20 the transferor whose assets are being valued for purposes of this section, the
21 applicability, terms, conditions, and limits of such insurance shall not be affected by
22 this statute, nor shall this statute otherwise affect the rights and obligations of an
23 insurer, transferor, or successor under any insurance contract and/or any related
24 agreements, including, without limitation, preenactment settlements resolving
25 coverage-related disputes, and the rights of an insurer to seek payment for
26 applicable deductibles, retrospective premiums or self-insured periods or periods
27 where insurance is uncollectible or otherwise unavailable. Without limiting the
28 foregoing, to the extent total gross assets include any such liability insurance, a
29 settlement of a dispute concerning any such liability insurance coverage entered
30 into by a transferor or successor with the insurers of the transferor before the

effective date of this 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.

32-46-05. Adjustment.

1. Except as provided in subsections 2 to 4 of this subdivision, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of:

a. 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

b. One percent.

2. The rate found in subsection 1 shall not be compounded.

3. The adjustment of the fair market value of total gross assets shall continue as provided in subsection 1 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.

4. 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 assets by subsection 3 of section 36-42-05.

36-42-06. Scope of chapter.

1. The courts of this state shall construe the provisions of this Act liberally with regard to innocent successors.

2. This Act shall apply to all asbestos claims filed against an innocent successor on or after the effective date of this Act. This Act shall also apply to any pending asbestos claims against an innocent successor in which trial has not commenced as of the effective date, except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.