

REFERENCE TITLE: asbestos related liability; successor corporations

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

## HB 2386

Introduced by  
Representatives Farnsworth, Gowan, Lesko, Proud, Stevens, Senators  
Antenori, Shooter: Representative Fann, Senators Gould, Klein

AN ACT

AMENDING TITLE 12, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4;  
RELATING TO SUCCESSOR ASBESTOS RELATED LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 5, Arizona Revised Statutes, is amended  
3 by adding article 4, to read:

4 ARTICLE 4. SUCCESSOR ASBESTOS RELATED LIABILITY

5 12-559. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ASBESTOS CLAIM" MEANS ANY CLAIM, WHEREVER OR WHENEVER MADE, FOR  
8 DAMAGES, LOSSES, INDEMNIFICATION, CONTRIBUTION OR OTHER RELIEF ARISING OUT  
9 OF, BASED ON OR IN ANY WAY RELATED TO ASBESTOS INCLUDING:

10 (a) THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS INCLUDING A CLAIM FOR:

11 (i) PERSONAL INJURY OR DEATH.

12 (ii) MENTAL OR EMOTIONAL INJURY.

13 (iii) RISK OF DISEASE OR OTHER INJURY.

14 (iv) THE COSTS OF MEDICAL MONITORING OR SURVEILLANCE.

15 (b) ANY CLAIM MADE BY OR ON BEHALF OF ANY PERSON EXPOSED TO ASBESTOS  
16 OR A REPRESENTATIVE OR A SPOUSE, PARENT, CHILD OR OTHER RELATIVE OF THE  
17 PERSON.

18 (c) ANY CLAIM FOR DAMAGE OR LOSS CAUSED BY THE INSTALLATION, PRESENCE,  
19 OR REMOVAL OF ASBESTOS.

20 2. "CORPORATION" MEANS A CORPORATION FOR PROFIT, INCLUDING A DOMESTIC  
21 CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE OR A FOREIGN CORPORATION  
22 ORGANIZED UNDER LAWS OTHER THAN THE LAWS OF THIS STATE.

23 3. "SUCCESSOR" MEANS A CORPORATION THAT ASSUMES OR INCURS OR HAS  
24 ASSUMED OR INCURRED SUCCESSOR ASBESTOS-RELATED LIABILITIES, THAT IS A  
25 SUCCESSOR AND THAT BECAME A SUCCESSOR BEFORE JANUARY 1, 1972 OR IS ANY OF  
26 THAT SUCCESSOR CORPORATION'S SUCCESSORS.

27 4. "SUCCESSOR ASBESTOS-RELATED LIABILITIES" MEANS ANY LIABILITIES,  
28 WHETHER KNOWN OR UNKNOWN, ASSERTED OR UNASSERTED, ABSOLUTE OR CONTINGENT,  
29 ACCRUED OR UNACCRUED, LIQUIDATED OR UNLIQUIDATED OR DUE OR TO BECOME DUE,  
30 THAT ARE RELATED IN ANY WAY TO ASBESTOS CLAIMS AND THAT WERE ASSUMED OR  
31 INCURRED BY A CORPORATION AS A RESULT OF OR IN CONNECTION WITH A MERGER OR  
32 CONSOLIDATION, OR THE PLAN OF MERGER OR CONSOLIDATION RELATED TO THE MERGER  
33 OR CONSOLIDATION WITH OR INTO ANOTHER CORPORATION, OR THAT ARE RELATED IN ANY  
34 WAY TO ASBESTOS CLAIMS BASED ON THE EXERCISE OF CONTROL OR THE OWNERSHIP OF  
35 STOCK OF THE CORPORATION BEFORE THE MERGER OR CONSOLIDATION. SUCCESSOR  
36 ASBESTOS-RELATED LIABILITIES INCLUDES LIABILITIES THAT, AFTER THE TIME OF THE  
37 MERGER OR CONSOLIDATION FOR WHICH THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS  
38 IS DETERMINED PURSUANT TO SECTION 12-559.02, WERE OR ARE PAID OR OTHERWISE  
39 DISCHARGED, OR COMMITTED TO BE PAID OR OTHERWISE DISCHARGED, BY OR ON BEHALF  
40 OF THE CORPORATION, BY A SUCCESSOR OF THE CORPORATION OR BY OR ON BEHALF OF A  
41 TRANSFEROR, IN CONNECTION WITH SETTLEMENTS, JUDGMENTS OR OTHER DISCHARGES IN  
42 THIS STATE OR ANOTHER JURISDICTION.

43 5. "TRANSFEROR" MEANS A CORPORATION FROM WHICH SUCCESSOR  
44 ASBESTOS-RELATED LIABILITIES ARE OR WERE ASSUMED OR INCURRED.

1 12-559.01. Asbestos related actions: successor corporation  
2 liability: application

3 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, THE CUMULATIVE  
4 SUCCESSOR ASBESTOS-RELATED LIABILITIES OF A SUCCESSOR CORPORATION ARE LIMITED  
5 TO THE FAIR MARKET VALUE OF THE TOTAL GROSS ASSETS OF THE TRANSFEROR  
6 DETERMINED AS OF THE TIME OF THE MERGER OR CONSOLIDATION. THE SUCCESSOR  
7 CORPORATION DOES NOT HAVE RESPONSIBILITY FOR SUCCESSOR ASBESTOS-RELATED  
8 LIABILITIES IN EXCESS OF THIS LIMITATION.

9 B. IF THE TRANSFEROR ASSUMED OR INCURRED SUCCESSOR ASBESTOS-RELATED  
10 LIABILITIES IN CONNECTION WITH A PRIOR MERGER OR CONSOLIDATION WITH A PRIOR  
11 TRANSFEROR, THE FAIR MARKET VALUE OF THE TOTAL ASSETS OF THE PRIOR TRANSFEROR  
12 DETERMINED AS OF THE TIME OF THE EARLIER MERGER OR CONSOLIDATION SHALL BE  
13 SUBSTITUTED FOR THE LIMITATION UNDER SUBSECTION A OF THIS SECTION TO  
14 DETERMINE THE LIMITATION OF LIABILITY OF A SUCCESSOR CORPORATION.

15 C. THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

16 1. WORKERS' COMPENSATION BENEFITS PAID BY OR ON BEHALF OF AN EMPLOYER  
17 TO AN EMPLOYEE PURSUANT TO TITLE 23, CHAPTER 6 OR A COMPARABLE WORKERS'  
18 COMPENSATION LAW OF ANOTHER JURISDICTION.

19 2. ANY CLAIM AGAINST A CORPORATION THAT DOES NOT CONSTITUTE A  
20 SUCCESSOR ASBESTOS-RELATED LIABILITY.

21 3. ANY OBLIGATION UNDER THE NATIONAL LABOR RELATIONS ACT OR UNDER ANY  
22 COLLECTIVE BARGAINING AGREEMENT.

23 4. A SUCCESSOR THAT, AFTER A MERGER OR CONSOLIDATION, CONTINUED IN THE  
24 BUSINESS OF MINING ASBESTOS OR IN THE BUSINESS OF SELLING OR DISTRIBUTING  
25 ASBESTOS FIBERS OR IN THE BUSINESS OF MANUFACTURING, DISTRIBUTING, REMOVING  
26 OR INSTALLING ASBESTOS-CONTAINING PRODUCTS WHICH WERE THE SAME OR  
27 SUBSTANTIALLY THE SAME AS THOSE PRODUCTS PREVIOUSLY MANUFACTURED,  
28 DISTRIBUTED, REMOVED OR INSTALLED BY THE TRANSFEROR.

29 12-559.02. Establishing the fair market value of total gross  
30 assets

31 A. TO DETERMINE THE LIMITATION PURSUANT TO SECTION 12-559.01, A  
32 SUCCESSOR CORPORATION MAY ESTABLISH THE FAIR MARKET VALUE OF TOTAL GROSS  
33 ASSETS THROUGH ANY METHOD REASONABLE UNDER THE CIRCUMSTANCES, INCLUDING  
34 EITHER OF THE FOLLOWING:

35 1. BY REFERENCE TO THE GOING CONCERN VALUE OF THE ASSETS OR TO THE  
36 PURCHASE PRICE ATTRIBUTABLE TO OR PAID FOR THE ASSETS IN AN ARMS LENGTH  
37 TRANSACTION.

38 2. IN THE ABSENCE OF OTHER READILY AVAILABLE INFORMATION FROM WHICH  
39 THE FAIR MARKET VALUE CAN BE DETERMINED, BY REFERENCE TO THE VALUE OF THE  
40 ASSETS RECORDED ON A BALANCE SHEET.

41 B. TOTAL GROSS ASSETS INCLUDE INTANGIBLE ASSETS.

42 C. TO THE EXTENT TOTAL GROSS ASSETS INCLUDE ANY LIABILITY INSURANCE  
43 THAT WAS ISSUED TO THE TRANSFEROR WHOSE ASSETS ARE BEING VALUED FOR THE  
44 PURPOSES OF THIS SECTION, THE APPLICABILITY, TERMS, CONDITIONS AND LIMITS OF  
45 THAT INSURANCE ARE NOT AFFECTED BY THIS SECTION, AND THIS SECTION DOES NOT

1 AFFECT THE RIGHTS AND OBLIGATIONS OF AN INSURER, TRANSFEROR OR SUCCESSOR  
2 UNDER ANY INSURANCE CONTRACT AND ANY RELATED AGREEMENTS INCLUDING,  
3 PREENACTMENT SETTLEMENTS RESOLVING COVERAGE-RELATED DISPUTES, OR THE RIGHTS  
4 OF AN INSURER TO SEEK PAYMENT FOR APPLICABLE DEDUCTIBLES, RETROSPECTIVE  
5 PREMIUMS OR SELF-INSURED RETENTIONS OR TO SEEK CONTRIBUTION FROM A SUCCESSOR  
6 FOR UNINSURED OR SELF-INSURED PERIODS OR PERIODS WHERE INSURANCE IS  
7 UNCOLLECTIBLE OR OTHERWISE UNAVAILABLE. NOTWITHSTANDING THIS SUBSECTION, TO  
8 THE EXTENT THAT TOTAL GROSS ASSETS INCLUDE LIABILITY INSURANCE, A SETTLEMENT  
9 OF A DISPUTE CONCERNING THAT LIABILITY INSURANCE COVERAGE THAT IS ENTERED  
10 INTO BY A TRANSFEROR OR SUCCESSOR WITH THE INSURERS OF THE TRANSFEROR BEFORE  
11 THE EFFECTIVE DATE OF THIS ACT DETERMINES THE TOTAL COVERAGE OF THAT  
12 LIABILITY INSURANCE TO BE INCLUDED IN THE CALCULATION OF THE TRANSFEROR'S  
13 TOTAL GROSS ASSETS.

14 12-559.03. Adjustment of the fair market value of total gross  
15 assets

16 A. EXCEPT AS PROVIDED IN SUBSECTIONS B, C AND D OF THIS SECTION, THE  
17 FAIR MARKET VALUE OF TOTAL GROSS ASSETS AT THE TIME OF THE MERGER OR  
18 CONSOLIDATION SHALL INCREASE ANNUALLY AT A RATE EQUAL TO THE SUM OF THE  
19 FOLLOWING:

20 1. THE PRIME RATE AS LISTED IN THE FIRST EDITION OF THE WALL STREET  
21 JOURNAL PUBLISHED FOR EACH CALENDAR YEAR SINCE THE MERGER OR CONSOLIDATION,  
22 UNLESS THE PRIME RATE IS NOT PUBLISHED IN THAT EDITION OF THE WALL STREET  
23 JOURNAL, IN WHICH CASE ANY REASONABLE DETERMINATION OF THE PRIME RATE ON THE  
24 FIRST DAY OF THE YEAR MAY BE USED.

25 2. ONE PER CENT.

26 B. THE RATE FOUND IN SUBSECTION A OF THIS SECTION SHALL NOT BE  
27 COMPOUNDED.

28 C. THE ADJUSTMENT OF THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS SHALL  
29 CONTINUE AS PROVIDED IN SUBSECTION A OF THIS SECTION UNTIL THE DATE THE  
30 ADJUSTED VALUE IS FIRST EXCEEDED BY THE CUMULATIVE AMOUNTS OF SUCCESSOR  
31 ASBESTOS-RELATED LIABILITIES THAT ARE PAID OR COMMITTED TO BE PAID BY OR ON  
32 BEHALF OF THE SUCCESSOR CORPORATION OR A PREDECESSOR OR BY OR ON BEHALF OF A  
33 TRANSFEROR AFTER THE TIME OF THE MERGER OR CONSOLIDATION FOR WHICH THE FAIR  
34 MARKET VALUE OF TOTAL GROSS ASSETS IS DETERMINED.

35 D. NO ADJUSTMENT OF THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS SHALL  
36 BE APPLIED TO ANY LIABILITY INSURANCE THAT MAY BE INCLUDED IN THE TOTAL GROSS  
37 ASSETS PURSUANT TO SECTION 12-559.02, SUBSECTION C.

38 Sec. 2. Application

39 A. The courts of this state shall liberally construe this act with  
40 regard to successors.

41 B. This act applies to all asbestos claims that are filed against a  
42 successor corporation on or after the effective date of this act and to any  
43 pending asbestos claims against a successor corporation in which trial has  
44 not commenced as of the effective date of the act, except that any provision

1 of this act that would be unconstitutional if applied retroactively shall be  
2 applied prospectively.

3 Sec. 3. Findings

4 The Legislature finds that asbestos litigation has forced almost one  
5 hundred companies into bankruptcy, threatening the continued viability of  
6 uniquely situated companies that have never manufactured, sold or distributed  
7 asbestos products and are liable only as successor corporations. This  
8 liability has created an overpowering public necessity to provide an  
9 immediate and remedial legislative solution. The Legislature finds the  
10 public interest as a whole is best served by addressing actions involving  
11 innocent successors so that they remain viable.

12 Sec. 4. Short title

13 This act may be cited as the "successor corporation asbestos-related  
14 liability fairness act".