

SESSION OF 2014

SUPPLEMENTAL NOTE ON SENATE BILL NO. 359

As Amended by Senate Committee on Judiciary

Brief*

SB 359 would enact the Successor Corporation Asbestos-Related Liability Fairness Act, which would provide that the cumulative successor asbestos-related liabilities of a successor corporation would be limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation.

“Successor” would be defined to include a corporation that has assumed or incurred successor asbestos-related liabilities that became a successor before January 1, 1972, or is any of that successor corporation’s successors. “Asbestos claim,” “corporation,” “successor asbestos-related liabilities,” and “transferor” also would be defined.

The successor corporation would not have responsibility for successor asbestos-related liabilities in excess of the limitation established by the bill. If the transferor has assumed or incurred successor asbestos-related liability in connection with a prior merger or consolidation with a prior transfer, the limitation of liability of a successor corporation would be the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation. The bill would set forth possible methods for establishing fair market value of the total gross assets. The fair market value of total gross assets at the time of the merger or consolidation would increase annually as specified in the bill.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would provide these limitations would apply to any successor corporation; however, the limitations would not apply to:

- Workers' compensation benefits paid by or on behalf of an employer to an employee pursuant to Kansas law or a comparable law of another jurisdiction;
- Any claim against a corporation that does not constitute a successor asbestos-related liability;
- Any obligation under the federal National Labor Relations Act or under any collective bargaining agreement; or
- 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 that were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

The Act would apply to all asbestos claims filed against a successor on or after July 1, 2014, and any pending asbestos claims against a successor in which trial has not commenced as of that date, except where retroactive application would be unconstitutional. Kansas courts would be required to construe its provisions liberally with regard to successors.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of Crown Corporation. In the Senate Committee, a representative of Crown Corporation testified in

support of the bill. A representative of the Kansas Association for Justice submitted written testimony opposing the bill.

The Senate Committee adopted a technical amendment suggested by the Office of the Revisor of Statutes.

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates the bill could increase the amount of time spent in district and appellate courts related to asbestos claims, requiring additional time spent by judicial and non-judicial personnel. However, a precise fiscal effect cannot be determined. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.