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H.P. 814

House of Representatives, April 1, 2015

**An Act To Limit Liability for Certain Successor Corporations under
Specific Circumstances**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MARTIN of Eagle Lake.
Cosponsored by Senator HASKELL of Cumberland and
Representatives: GUERIN of Glenburn, O'CONNOR of Berwick, STANLEY of Medway,
WARD of Dedham, Senator: SAVIELLO of Franklin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 14 MRSA c. 8** is enacted to read:

3 **CHAPTER 8**

4 **SUCCESSOR ASBESTOS-RELATED LIABILITY**

5 **§191. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Asbestos claim.** "Asbestos claim" means a claim, wherever or whenever made,
9 for damages, losses, indemnification, contribution or other relief arising out of, based on
10 or in any way related to asbestos, including any of the following:

11 A. A claim related to the health effects of exposure to asbestos, including a claim for
12 personal injury or death, mental or emotional injury, risk of disease or other injury or
13 the costs of medical monitoring or surveillance;

14 B. A claim made by or on behalf of a person exposed to asbestos or a representative,
15 spouse, parent, child or other relative of the person; or

16 C. A claim for damage or loss caused by the installation, presence or removal of
17 asbestos.

18 **2. Corporation.** "Corporation" means a corporation established under either
19 domestic or foreign charter and includes a corporate subsidiary and a business entity in
20 which a corporation participates or is a stockholder, a partner or a participant in a joint
21 venture.

22 **3. Successor.** "Successor" means a corporation that assumes or incurs or has
23 assumed or has incurred successor asbestos-related liabilities through operation of law,
24 including but not limited to a merger or consolidation or plan of merger or consolidation
25 related to a consolidation or merger or by appointment as administrator or as trustee in
26 bankruptcy, debtor in possession, liquidation or receivership and that became a successor
27 before January 1, 1972. "Successor" includes any of that successor corporation's
28 successors.

29 **4. Successor asbestos-related liability.** "Successor asbestos-related liability" means
30 liabilities, whether known or unknown, asserted or unasserted, absolute or contingent,
31 accrued or unaccrued, liquidated or unliquidated or due or to become due, that are related
32 in any way to asbestos claims and were assumed or incurred by a corporation as a result
33 of or in connection with a merger or consolidation, or the plan of merger or consolidation
34 related to the merger or consolidation with or into another corporation, or that are related
35 in any way to asbestos claims based on the exercise of control or the ownership of stock
36 of the corporation before the merger or consolidation. "Successor asbestos-related
37 liability" includes liabilities that, after the time of the merger or consolidation for which
38 the fair market value of total gross assets is determined under section 194, were or are
39 paid or otherwise discharged or committed to be paid or otherwise discharged, by or on

1 behalf of the corporation or by a successor of the corporation or by or on behalf of a
2 transferor, in connection with settlements, judgments or other discharges in this State or
3 another jurisdiction.

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

6 **§192. Applicability**

7 The limitations in section 193 apply to a successor but do not apply to the following:

8 **1. Workers' compensation benefits.** Workers' compensation benefits paid by or on
9 behalf of an employer to an employee under the provisions of Title 39-A or a comparable
10 workers' compensation law of another jurisdiction;

11 **2. Unrelated claim.** A claim against a corporation that does not constitute a
12 successor asbestos-related liability;

13 **3. National Labor Relations Act obligation; collective bargaining.** An obligation
14 under the National Labor Relations Act, 29 United States Code, Section 151, et seq., as
15 amended, or under a collective bargaining agreement; or

16 **4. Asbestos business.** A successor that, after a merger or consolidation, continued in
17 the business of mining asbestos or in the business of selling or distributing asbestos fibers
18 or in the business of manufacturing, distributing, removing or installing asbestos-
19 containing products that were the same or substantially the same as those products
20 previously manufactured, distributed, removed or installed by the transferor.

21 **§193. Limitation on successor asbestos-related liability**

22 **1. Fair market value.** Except as further limited in subsection 2, the cumulative
23 successor asbestos-related liabilities of a successor are limited to the fair market value of
24 the total gross assets of the transferor determined as of the time of the merger or
25 consolidation. The successor does not have responsibility for successor asbestos-related
26 liabilities in excess of this limitation.

27 **2. Prior merger or consolidation.** If a transferor has assumed or incurred successor
28 asbestos-related liabilities in connection with a prior merger or consolidation with a prior
29 transferor, the fair market value of the total assets of the prior transferor determined as of
30 the time of the earlier merger or consolidation must be substituted for the limitation set
31 forth in subsection 1 for purposes of determining the limitation of liability of a successor.

32 **§194. Establishing fair market value of total gross assets**

33 **1. Method.** A successor may establish the fair market value of total gross assets for
34 the purpose of the limitations under section 193 through any method reasonable under the
35 circumstances, including:

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

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

3 For purposes of this subsection, "total gross assets" includes intangible assets.

4 **2. Applicable liability insurance.** To the extent total gross assets include applicable
5 liability insurance that was issued to the transferor whose assets are being valued for
6 purposes of this section, the applicability, terms, conditions and limits of that insurance
7 are not affected by this chapter. This chapter does not otherwise affect the rights and
8 obligations of an insurer, transferor or successor under an insurance contract or any
9 related agreements, including, without limitation, preenactment settlements resolving
10 coverage-related disputes, or the rights of an insurer to seek payment for applicable
11 deductibles, retrospective premiums or self-insured retentions or to seek contribution for
12 uninsured or self-insured periods or periods when insurance is uncollectible or otherwise
13 unavailable. To the extent total gross assets include liability insurance, a settlement of a
14 dispute concerning the liability insurance coverage entered into by a transferor or
15 successor with the insurers of the transferor before the effective date of this chapter is
16 determinative of the total coverage of the liability insurance to be included in the
17 calculation of the transferor's total gross assets.

18 **§195. Adjustment**

19 **1. Increase.** Except as provided in subsections 2, 3 and 4, for the purposes of this
20 chapter, the fair market value of total gross assets at the time of a merger or consolidation
21 increases annually at a rate equal to the sum of:

22 A. The prime rate published in the first edition of the Wall Street Journal published
23 in each calendar year; and

24 B. One percent.

25 **2. Not compounded.** The rate in subsection 1 is not compounded.

26 **3. Termination of adjustment.** The adjustment of fair market value of total gross
27 assets continues as provided under subsection 1 until the date the adjusted value is first
28 exceeded by the cumulative amounts of successor asbestos-related liabilities paid or
29 committed to be paid by or on behalf of the successor or a predecessor or by or on behalf
30 of a transferor after the time of the merger or consolidation for which the fair market
31 value of total gross assets is determined.

32 **4. No adjustment of liability insurance.** No adjustment of the fair market value of
33 total gross assets pursuant to this section may be applied to any liability insurance
34 otherwise included in total gross assets under section 194, subsection 2.

35 **§196. Application**

36 This chapter applies to all asbestos claims filed against a successor on or after the
37 effective date of this chapter.

1 **SUMMARY**

2 This bill limits the liability of successor corporations that, before the dangers of
3 asbestos were known publicly in 1972, acquired or merged with a predecessor
4 corporation that engaged in asbestos-related activities. Liability is capped at the value of
5 the predecessor corporation at the time of merger adjusted for inflation, but only for
6 successor corporations that did not continue in the business of mining, selling,
7 distributing, manufacturing, removing or installing asbestos-containing products.