

# Successor Asbestos-Related Liability (SC)

This Act:

- Defines certain terms related to asbestos-related claims;
- Limits successor asbestos-related liabilities of a corporation under certain circumstances;
- Provides exceptions to the limitations on successor liability; and
- Provides a method for establishing the fair market value of total gross assets in determining the limitations on successor liability.

Submitted as:

South Carolina

Act No. 280

Status: Enacted into law in 2006.

## Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “An Act Relating To Asbestos-Related  
2 Claims.”  
3

4 Section 2. [*Legislative Findings.*] The [Legislature] finds that the number of asbestos-  
5 related claims has increased significantly in recent years and threatens the continued viability of a  
6 number of uniquely situated companies that have not ever manufactured, sold, or distributed  
7 asbestos or asbestos products and are liable only as successor corporations. This liability has  
8 created an overpowering public necessity to provide an immediate, remedial, legislative solution.  
9 The [Legislature] intends that the cumulative recovery by all asbestos claimants from innocent  
10 successors be limited, and intends to simply change the form of asbestos claimants’ remedies  
11 without impairing their substantive rights, and finds that there are no alternative means to meet  
12 this public necessity. The [Legislature] finds the public interest as a whole is best served by  
13 providing relief to these innocent successors so that they may remain viable and continue to  
14 contribute to this state.  
15

16 Section 3. [*Definitions.*] As used in this Act:

17 (1) “Asbestos claim” means a claim for damages, losses, indemnification, contribution, or  
18 other relief arising out of, based on, or in any way related to asbestos, including:

19 (a) the health effects of exposure to asbestos, including a claim for:

- 20 1. personal injury or death;
- 21 2. mental or emotional injury;
- 22 3. risk of disease or other injury; or
- 23 4. the costs of medical monitoring or surveillance, to the extent these

24 claims are recognized pursuant to state law;

25 (b) a claim made by or on behalf of a person exposed to asbestos, or a  
26 representative, spouse, parent, child, or other relative of the person; and

27 (c) a claim for damage or loss caused by the installation, presence, or removal of  
28 asbestos.

29 (2) “Corporation” means a corporation for profit, including a domestic corporation  
30 organized under the laws of this state, or a foreign corporation organized under laws other than  
31 the laws of this state.

32 (3) “Successor” means a corporation that assumes or incurs, or has assumed or incurred,  
33 successor asbestos-related liabilities.

34 (4) “Successor asbestos-related liabilities” means liabilities, whether known or unknown,  
35 asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated,  
36 or due or to become due, which are related in any way to an asbestos claim and were assumed or  
37 incurred by a corporation as a result of or in connection with a merger or consolidation, or the  
38 plan of merger or consolidation related to the merger or consolidation, with or into another  
39 corporation, or which are related in any way to asbestos claims based on the exercise of control or  
40 the ownership of stock of the corporation before the merger or consolidation. The term includes  
41 liabilities that, after the time of the merger or consolidation for which the fair market value of  
42 total gross assets is determined under section 6 of this Act, were or are paid or otherwise  
43 discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation,  
44 or by a successor of the corporation, or by or on behalf of a transferor, in connection with  
45 settlements, judgments, or other discharges in this state or another jurisdiction.

46 (5) “Transferor” means a corporation from which successor asbestos-related liabilities are  
47 or were assumed or incurred.

48  
49 Section 4. [*Applicability.*]

50 (1) The limitations of section 5 of this Act apply to a corporation that is a successor and  
51 became a successor before [January 1, 1972], or is any of that successor corporation’s successors.

52 (2) The limitations in section 5 of this Act do not apply to:

53 (a) Workers’ Compensation benefits paid by or on behalf of an employer to an  
54 employee under [insert citation], or a comparable workers’ compensation law of another  
55 jurisdiction;

56 (b) a claim against a corporation that does not constitute a successor asbestos-  
57 related liability;

58 (c) an insurance company, as defined in [insert citation];

59 (d) Any obligations under the National Labor Relations Act, as amended, or under  
60 any collective bargaining agreement; or

61 (e) a successor that, after a merger or consolidation, continued in the business of  
62 mining asbestos, in the business of selling or distributing asbestos fibers, or in the business of  
63 manufacturing, distributing, removing, or installing asbestos-containing products that were the  
64 same or substantially the same as those products previously manufactured, distributed, removed,  
65 or installed by the transferor.

66  
67 Section 5. [*Limitations on Successor Asbestos-Related Liabilities.*]

68 (1) Except as further limited in subsection (2), the cumulative successor asbestos-related  
69 liabilities of a corporation are limited to the fair market value of the total gross assets of the  
70 transferor determined as of the time of the merger or consolidation. The corporation does not  
71 have any responsibility for successor asbestos-related liabilities in excess of this limitation.

72 (2) If the transferor had assumed or incurred successor asbestos-related liabilities in  
73 connection with a prior merger or consolidation with a prior transferor, the fair market value of  
74 the total assets of the prior transferor, determined as of the time of the earlier merger or  
75 consolidation, shall be substituted for the limitation set forth in subsection (1) for purposes of  
76 determining the limitation of liability of a corporation.

77  
78 Section 6. [*Establishing Fair Market Value of Total Gross Assets.*]

79 (1) A corporation may establish the fair market value of total gross assets for the purpose  
80 of the limitations under section 5 of this Act through any method reasonable under the  
81 circumstances, including:

82 (a) by reference to the going concern value of the assets or to the purchase price  
83 attributable to or paid for the assets in an arm's-length transaction; or

84 (b) in the absence of other readily available information from which fair market  
85 value can be determined, by reference to the value of the assets recorded on a balance sheet.

86 (2) Total gross assets include intangible assets.

87 (3) Total gross assets include the aggregate coverage under any applicable liability  
88 insurance that was issued to the transferor whose assets are being valued for purposes of this  
89 section, which insurance has been collected or is collectible to cover successor asbestos-related  
90 liabilities except compensation for liabilities arising from workers' exposure to asbestos solely  
91 during the course of their employment by the transferor. A settlement of a dispute concerning the  
92 insurance coverage entered into by a transferor or successor with the insurers of the transferor  
93 before the effective date of this act shall be determinative of the aggregate coverage of the  
94 liability insurance to be included in the calculation of the transferor's total gross assets.

95  
96 Section 7. [*Adjustment.*]

97 (1) Except as provided in subsections (2), (3), and (4), the fair market value of total gross  
98 assets at the time of a merger or consolidation shall increase annually at a rate equal to the sum  
99 of:

100 (a) the prime rate as listed in the first edition of the Wall Street Journal published  
101 for each calendar year since the merger or consolidation, unless the prime rate is not published in  
102 that edition of the Wall Street Journal, in which case any reasonable determination of the prime  
103 rate on the first day of the year may be used; and

104 (b) [one percent].

105 (2) The rate in subsection (1) may not be compounded.

106 (3) The adjustment of fair market value of total gross assets shall continue as provided  
107 under subsection (1) until the date the adjusted value is first exceeded by the cumulative amounts  
108 of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the  
109 corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or  
110 consolidation for which the fair market value of total gross assets is determined.

111 (4) No adjustment of the fair market value of total gross assets shall be applied to any  
112 liability insurance otherwise included in the definition of total gross assets by subsection (3) of  
113 section 6 of this Act.

114  
115 Section 8. [*Severability.*] [Insert severability clause.]

116  
117 Section 9. [*Repealer.*] [Insert repealer clause.]

118  
119 Section 10. [*Effective Date.*] [Insert effective date.]