

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.]