

## CHAPTER 686C

## ASBESTOS-RELATED LIABILITY OF SUCCESSOR CORPORATIONS

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**686C.1 Title.**

This chapter shall be known and may be cited as the “*Successor Corporation Asbestos-Related Liability Fairness Act*”.

2017 Acts, ch 11, §19

**686C.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Asbestos action*” means the same as defined in section 686A.2, but also includes any claim for damage or loss caused by the installation, presence, or removal of asbestos.

2. “*Corporation*” means any corporation established under either domestic or foreign charter and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner, or a joint venture.

3. “*Successor*” means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities through operation of law, including but not limited to a merger or consolidation or plan of merger or consolidation related to such consolidation or merger or by appointment as an administrator or as a trustee in bankruptcy, debtor in possession, liquidation, or receivership and that became a successor before January 1, 1972. “*Successor*” includes any of that successor corporation’s successors.

4. “*Successor asbestos-related liability*” means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related in any way to an asbestos action and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to an asbestos action based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. “*Successor asbestos-related liability*” includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under section 686C.4, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

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

2017 Acts, ch 11, §20

**686C.3 Limitations on successor asbestos-related liabilities.**

1. Except as provided in subsection 2, the cumulative successor asbestos-related liabilities of a successor are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. A successor shall not have responsibility for successor asbestos-related liabilities in excess of this limitation.

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

3. The limitations in this section shall apply to any successor but shall not apply to any of the following:

a. Workers’ compensation benefits paid by or on behalf of an employer to an employee

under the provisions of [chapter 85](#) or [85A](#), or a comparable workers' compensation law of another jurisdiction.

b. Any claim against a corporation that does not constitute a successor asbestos-related liability.

c. Any obligation under the federal National Labor Relations Act, 29 U.S.C. §151 et seq., as amended, or under any collective bargaining agreement.

d. 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 which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

[2017 Acts, ch 11, §21](#)

Referred to in [§686C.4](#)

#### **686C.4 Establishing fair market value of total gross assets.**

1. A successor may establish the fair market value of total gross assets, which include intangible assets, for the purpose of the limitations under [section 686C.3](#), through any method reasonable under the circumstances, including any of the following:

a. By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction.

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

2. To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of [this section](#), the applicability, terms, conditions, and limits of such insurance shall not be affected by [this chapter](#), nor shall [this chapter](#) otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract or any related agreement, including, without limitation, preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before July 1, 2017, shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

[2017 Acts, ch 11, §22](#)

Referred to in [§686C.2](#), [686C.5](#)

#### **686C.5 Adjustment.**

1. Except as provided in subsections 2, 3, and 4, the fair market value of total gross assets at the time of a merger or consolidation shall increase annually at a rate equal to the sum of the prime rate as listed in the first edition of the Wall street journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall street journal, in which case any reasonable determination of the prime rate on the first day of the year may be used, plus one percent.

2. The rate determined under [subsection 1](#) shall not be compounded.

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

4. No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the total gross assets pursuant to [section 686C.4, subsection 2](#).

[2017 Acts, ch 11, §23](#)

**686C.6 Scope of chapter — application.**

1. [This chapter](#) shall be liberally construed with regard to successors.
2. [This chapter](#) applies to all asbestos claims filed against a successor on or after July 1, 2017.
3. [This chapter](#) applies to all pending asbestos actions in which trial has not commenced as of July 1, 2017, unless the court finds that the application of a provision in [this chapter](#) would unconstitutionally affect a vested right. In that case, the provision does not apply and the court shall apply prior law.  
[2017 Acts, ch 11, §24](#)