Article 6.

Successor Asbestos-Related Liability.

§ 99E-50. Definitions.

The following definitions apply in this Article:

(1) Asbestos claim. – Any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including any of the following:
   a. The health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance.
   b. Any claim made by or on behalf of any person exposed to asbestos or a representative, spouse, parent, child, or other relative of the person.
   c. Any claim for damage or loss caused by the installation, presence, or removal of asbestos.

(2) Corporation. – 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 venturer.

(3) Successor. – 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 administrator or as 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. – 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 asbestos claims 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 asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under G.S. 99E-53, 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. – A corporation from which successor asbestos-related liabilities are or were assumed or incurred. (2014-110, s. 4.1.)

§ 99E-51. Applicability.

The limitations in G.S. 99E-52 shall apply to any successor but shall not apply to any of the following:

(1) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of Chapter 97 of the General Statutes, or a comparable workers' compensation law of another jurisdiction.
(2) Any claim against a corporation that does not constitute a successor asbestos-related liability.
(3) Any obligation under the National Labor Relations Act, 29 U.S.C. § 151, et seq., as amended, or under any collective bargaining agreement.
(4) 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. (2014-110, s. 4.1.)

§ 99E-52. Limitation on successor asbestos-related liability.

(a) Except as further limited in subsection (b) of this section, the cumulative successor asbestos-related liabilities of a successor corporation 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. The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) 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 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 (a) of this section for purposes of determining the limitation of liability of a successor corporation. (2014-110, s. 4.1.)

§ 99E-53. Establishing fair market value of total gross assets.

(a) A successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under G.S. 99E-35 [G.S. 99E-52] through any method reasonable under the circumstances, including either of the following:

(1) 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.
(2) 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.

(b) Total gross assets include intangible assets.

(c) 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 statute nor shall this statute otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract and/or any related agreements, 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 the effective date of this act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets. (2014-110, s. 4.1.)

§ 99E-54. Adjustment.

(a) Except as provided in subsections (b), (c), and (d) of this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of the following:

(1) 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 calendar year may be used.

(2) One percent (1%).

(b) The rate defined in subsection (a) of this section shall not be compounded.

(c) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (a) of this section 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.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the definition of total gross assets by subsection (c) of G.S. 99E-53. (2014-110, s. 4.1.)

§ 99E-55. Scope of Article; application.

(a) This Article shall be liberally construed with regard to successors.

(b) This Article shall apply to all asbestos claims filed against a successor on or after the effective date of this act. (2014-110, s. 4.1.)

§ 99E-56: Reserved for future codification purposes.

§ 99E-57: Reserved for future codification purposes.

§ 99E-58: Reserved for future codification purposes.

§ 99E-59: Reserved for future codification purposes.

§ 99E-60: Reserved for future codification purposes.

§ 99E-61: Reserved for future codification purposes.

§ 99E-62: Reserved for future codification purposes.

§ 99E-63: Reserved for future codification purposes.

§ 99E-64: Reserved for future codification purposes.