

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1399 Session of
2012

INTRODUCED BY TOMLINSON, FOLMER, PIPPY, RAFFERTY AND
EICHELBERGER, JANUARY 26, 2012

REFERRED TO JUDICIARY, JANUARY 26, 2012

AN ACT

1 Providing for successor business entity liability.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Successor
6 Business Entity Liability Act.

7 Section 2. Legislative intent.

8 (a) Findings.--The General Assembly finds that:

9 (1) Asbestos-related claims threaten the continued
10 viability of successor business entities which are formed or
11 organized under the laws of this Commonwealth or another
12 jurisdiction that have never manufactured, sold or
13 distributed asbestos or asbestos-containing products.

14 (2) It is in the best interest of this Commonwealth to
15 ensure the economic viability of the entities under paragraph

16 (1).

17 (3) The viability of the domestic and foreign business

1 entities under paragraph (1) is threatened due solely to
2 their status as successor business entities by merger or
3 consolidation based on actions taken prior to the 1972
4 adoption of asbestos regulations by the Federal Occupational
5 Safety and Health Administration.

6 (4) The cumulative recovery by all asbestos claimants
7 from innocent successor business entities should be limited.

8 (b) Intent.--It is the intent of the General Assembly to
9 expand the protections granted in 15 Pa.C.S § 1929.1 (relating
10 to limitations on asbestos-related liabilities relating to
11 certain mergers or consolidations) to successor business
12 entities which are formed or organized under the laws of this
13 Commonwealth or another jurisdiction.

14 Section 3. Definitions.

15 The following words and phrases when used in this act shall
16 have the following meanings:

17 "Asbestos claim." A claim, wherever or whenever made, for
18 damages, losses, indemnification, contribution or other relief
19 arising out of, based on or in any way related to asbestos,
20 including property damage caused by the installation, presence
21 or removal of asbestos, the health effects of exposure to
22 asbestos, including a claim for personal injury, death, mental
23 or emotional injury, risk of disease or other injury or the
24 costs of medical monitoring or surveillance. The term includes a
25 claim made by or on behalf of any person exposed to asbestos or
26 a representative, spouse, parent, child or other relative of
27 that individual.

28 "Asbestos-related liability." Any liability, whether known
29 or unknown, asserted or unasserted, absolute or contingent,
30 accrued or unaccrued, liquidated or unliquidated or due or to

1 become due, related in any way to an asbestos claim.

2 "Business entity." A for-profit corporation, limited
3 liability company, partnership, limited liability partnership or
4 Subchapter S corporation formed or organized under the laws of
5 this Commonwealth or another jurisdiction.

6 "Successor asbestos-related liability." Any asbestos-related
7 liability that was assumed or incurred by a business entity as a
8 result or in connection with a merger or consolidation, or a
9 plan of merger or consolidation related thereto, with or into
10 another business entity formed or organized under the laws of
11 this Commonwealth or another jurisdiction or which are related
12 in any way to asbestos claims based on the exercise of control
13 or the ownership of stock of the business entity prior to the
14 merger or consolidation. The term shall include liabilities
15 which, after the time of the merger or consolidation with a
16 transferor for which the fair market value of the total gross
17 assets of the successor business entity are determined under
18 section 5, was paid, committed to be paid or discharged by or on
19 behalf of the business entity, successor business entity or
20 transferor in connection with a settlement, judgment or
21 discharge in this Commonwealth or another jurisdiction.

22 "Successor business entity." Any of the following:

23 (1) A business entity that has merged or consolidated
24 with a transferor prior to January 1, 1972, and that has
25 assumed or incurred successor asbestos-related liabilities.

26 (2) A business entity that is a successor of a business
27 entity that has merged or consolidated with a transferor
28 prior to January 1, 1972, and that has assumed or incurred
29 successor asbestos-related liabilities.

30 "Transferor." A business entity for which successor

1 asbestos-related liabilities are or were assumed or incurred.

2 Section 4. Liability.

3 (a) Limitation.--Except as provided under subsection (c),
4 the cumulative successor asbestos-related liability of a
5 successor business entity shall be limited to the fair market
6 value of the total gross assets of the transferor as of the time
7 of the merger or consolidation with the successor business
8 entity.

9 (b) Responsibility.--A successor business entity shall have
10 no responsibility for successor asbestos-related liabilities in
11 excess of the limitation under subsection (a).

12 (c) Exception.--If a transferor assumed or incurred
13 successor asbestos-related liability in connection with a prior
14 merger or consolidation with a prior transferor, the fair market
15 value of the total assets of the prior transferor as of the time
16 of the prior merger or consolidation shall be substituted for
17 the limitation under subsection (a) for purposes of determining
18 the liability of the successor business entity.

19 Section 5. Fair market value.

20 (a) Establishment.--A successor business entity may
21 establish the fair market value of total gross assets of the
22 transferor as of the time of the merger or consolidation by any
23 reasonable method under the circumstances, including the
24 following:

25 (1) By reference to the going concern value of the
26 assets or to the purchase price of the assets in an arm's
27 length transaction.

28 (2) In the absence of other readily available
29 information from which fair market value can be determined,
30 by reference to the value of the assets recorded on a balance

1 sheet.

2 (b) Intangible assets.--Total gross assets under this
3 section shall include intangible assets.

4 (c) Prima facie evidence.--A showing by the successor
5 business entity of a reasonable determination of the fair market
6 value of total gross assets shall be prima facie evidence of
7 their fair market value.

8 (d) Burden.--Following a reasonable determination of the
9 fair market value of total gross assets by the successor
10 business entity, a claimant disputing that determination shall
11 have the burden of establishing a different fair market value of
12 the total gross assets.

13 (e) Settlement.--To the extent that total gross assets
14 include liability insurance, a settlement of a dispute relating
15 to liability insurance coverage entered into by the transferor
16 or successor business entity with the insurer of the transferor
17 prior to the effective date of this section shall be
18 determinative of the total coverage of the liability insurance
19 in the calculation of the transferor's total gross assets.

20 Section 6. Adjustment of fair market value.

21 (a) Annual increase.--Except as provided under subsection
22 (c), the fair market value of total gross assets of a transferor
23 as determined under section 5 shall increase annually until the
24 earlier of:

25 (1) The date of the settlement, judgment or other
26 discharge to which the limitations under section 4 are being
27 applied.

28 (2) The date on which the adjusted fair market value is
29 first exceeded by the cumulative amounts paid or committed to
30 be paid by or on behalf of a successor business entity or a

1 transferor after the time of merger or consolidation for
2 which the fair market value of total assets is determined for
3 purposes of section 4 in connection with a settlement,
4 judgment or other discharge of successor asbestos-related
5 liabilities.

6 (b) Rate.--Any adjustment under subsection (a) shall be at
7 the rate equal to the prime rate listed in the first edition of
8 the Wall Street Journal published for each calendar year since
9 the merger or consolidation plus 1% not compounded.

10 (c) Exception.--No adjustment of the fair market value of
11 total gross assets may be applied to any liability insurance as
12 determined under section 5.

13 Section 7. Applicability and construction.

14 (a) Applicability.--This act shall not apply to any of the
15 following:

16 (1) Workers' compensation benefits paid to an employee
17 under the act of June 2, 1915 (P.L.736, No.338), known as the
18 Workers' Compensation Act, or a comparable workers'
19 compensation law of another jurisdiction.

20 (2) A claim against a business entity that does not
21 constitute a successor asbestos-related liability.

22 (3) An insurance business entity as defined in 15
23 Pa.C.S. § 3102 (relating to definitions).

24 (4) Obligations arising under the National Labor
25 Relations Act (49 Stat. 449, 29 U.S.C. § 151 et seq.) or
26 under a collective bargaining agreement.

27 (b) Construction.--Nothing in this act shall affect the
28 scope or effect of 15 Pa.C.S. § 1929.1. Limitations under 15
29 Pa.C.S. § 1929.1 shall continue to apply to all asbestos claims.

30 Section 20. Effective date.

1 This act shall take effect immediately.