
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1422 Session of
2014

INTRODUCED BY TOMLINSON, PILEGGI, HUGHES, RAFFERTY, FOLMER,
MENSCH, EICHELBERGER AND McILHINNEY, JUNE 16, 2014

REFERRED TO JUDICIARY, JUNE 16, 2014

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in particular rights and
3 immunities, providing for successor business entity
4 liability.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Chapter 83 of Title 42 of the Pennsylvania
8 Consolidated Statutes is amended by adding a subchapter to read:

9 SUBCHAPTER F.1

10 SUCCESSOR BUSINESS ENTITY LIABILITY

11 Sec.

12 8368.1. Legislative findings and declaration.

13 8368.2. Definitions.

14 8368.3. Liability.

15 8368.4. Fair market value.

16 8368.5. Adjustment of fair market value.

17 8368.6. Applicability and construction.

18 § 8368.1. Legislative findings and declaration.

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

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

6 (2) It is in the best interest of this Commonwealth to
7 ensure the economic viability of the entities under paragraph
8 (1).

9 (3) The viability of the domestic and foreign business
10 entities under paragraph (1) is threatened due solely to
11 their status as successor business entities by merger or
12 consolidation based on actions taken prior to the 1972
13 adoption of asbestos regulations by the Occupational Safety
14 and Health Administration.

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

17 (b) Intent.--It is the intent of the General Assembly to
18 expand the protections granted in 15 Pa.C.S. § 1929.1 (relating
19 to limitations on asbestos-related liabilities relating to
20 certain mergers or consolidations) to successor business
21 entities which are formed or organized under the laws of this
22 Commonwealth or another jurisdiction.

23 § 8368.2. Definitions.

24 The following words and phrases when used in this subchapter
25 shall have the meanings given to them in this section unless the
26 context clearly indicates otherwise:

27 "Asbestos claim." A claim, wherever or whenever made, for
28 damages, losses, indemnification, contribution or other relief
29 arising out of, based on or in any way related to asbestos,
30 including property damage caused by the installation, presence

1 or removal of asbestos, the health effects of exposure to
2 asbestos, including a claim for personal injury, death, mental
3 or emotional injury, risk of disease or other injury or the
4 costs of medical monitoring or surveillance. The term includes a
5 claim made by or on behalf of any person exposed to asbestos or
6 a representative, spouse, parent, child or other relative of
7 that individual.

8 "Asbestos-related liability." Any liability, whether known
9 or unknown, asserted or unasserted, absolute or contingent,
10 accrued or unaccrued, liquidated or unliquidated or due or to
11 become due or related in any way to an asbestos claim.

12 "Business entity." A for-profit corporation, limited
13 liability company, partnership, limited liability partnership or
14 Subchapter S corporation formed or organized under the laws of
15 this Commonwealth or another jurisdiction.

16 "Successor asbestos-related liability." Any asbestos-related
17 liability that was assumed or incurred by a business entity as a
18 result or in connection with a merger or consolidation, or a
19 plan of merger or consolidation related thereto, with or into
20 another business entity formed or organized under the laws of
21 this Commonwealth or another jurisdiction or which are related
22 in any way to asbestos claims based on the exercise of control
23 or the ownership of stock of the business entity prior to the
24 merger or consolidation. The term shall include liabilities
25 which, after the time of the merger or consolidation with a
26 transferor for which the fair market value of the total gross
27 assets of the successor business entity are determined under
28 section 8368.4 (relating to fair market value), were paid,
29 committed to be paid or discharged by or on behalf of the
30 business entity, successor business entity or transferor in

1 connection with a settlement, judgment or discharge in this
2 Commonwealth or another jurisdiction.

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

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

7 (2) A business entity that is a successor of a business
8 entity that has merged or consolidated with a transferor
9 prior to January 1, 1972, and that has assumed or incurred
10 successor asbestos-related liabilities.

11 "Transferor." A business entity from which successor
12 asbestos-related liabilities are or were assumed or incurred.

13 § 8368.3. Liability.

14 (a) Limitation.--Except as provided under subsection (c),
15 the cumulative successor asbestos-related liability of a
16 successor business entity shall be limited to the fair market
17 value of the total gross assets of the transferor as of the time
18 of the merger or consolidation with the successor business
19 entity.

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

23 (c) Exception.--If a transferor assumed or incurred
24 successor asbestos-related liability in connection with a prior
25 merger or consolidation with a prior transferor, the fair market
26 value of the total assets of the prior transferor as of the time
27 of the prior merger or consolidation shall be substituted for
28 the limitation under subsection (a) for purposes of determining
29 the liability of the successor business entity.

30 § 8368.4. Fair market value.

1 (a) Establishment.--A successor business entity may
2 establish the fair market value of total gross assets of the
3 transferor as of the time of the merger or consolidation by any
4 reasonable method under the circumstances, including the
5 following:

6 (1) By reference to the going-concern value of the
7 assets or to the purchase price of the assets in an arms-
8 length transaction.

9 (2) In the absence of other readily available
10 information from which fair market value can be determined,
11 by reference to the value of the assets recorded on a balance
12 sheet.

13 (b) Intangible assets.--Total gross assets under this
14 section shall include intangible assets.

15 (c) Prima facie evidence.--A showing by the successor
16 business entity of a reasonable determination of the fair market
17 value of total gross assets shall be prima facie evidence of
18 their fair market value.

19 (d) Burden.--Following a reasonable determination of the
20 fair market value of total gross assets by the successor
21 business entity, a claimant disputing that determination shall
22 have the burden of establishing a different fair market value of
23 the total gross assets.

24 (e) Insurance settlement.--To the extent that total gross
25 assets include liability insurance, a settlement of a dispute
26 relating to liability insurance coverage entered into by the
27 transferor or successor business entity with the insurer of the
28 transferor prior to the effective date of this section shall be
29 determinative of the total coverage of the liability insurance
30 in the calculation of the transferor's total gross assets.

1 § 8368.5. Adjustment of fair market value.

2 (a) Annual increase.--Except as provided under subsection
3 (c), the fair market value of total gross assets of a transferor
4 as determined under section 8368.4 (relating to fair market
5 value) shall increase annually until the earlier of:

6 (1) The date of the settlement, judgment or other
7 discharge to which the limitations under section 8368.3
8 (relating to liability) are being applied.

9 (2) The date on which the adjusted fair market value is
10 first exceeded by the cumulative amounts paid or committed to
11 be paid by or on behalf of a successor business entity or a
12 transferor after the time of merger or consolidation for
13 which the fair market value of total assets is determined for
14 purposes of section 8368.3, in connection with settlements,
15 judgments or other discharges of successor asbestos-related
16 liabilities.

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

21 (c) Exception.--No adjustment of the fair market value of
22 total gross assets may be applied to any liability insurance as
23 determined under section 8368.4.

24 § 8368.6. Applicability and construction.

25 (a) Applicability.--This subchapter shall not apply to any
26 of the following:

27 (1) An asbestos claim for which the applicable period of
28 limitation commenced on or before the effective date of this
29 section.

30 (2) Workers' compensation benefits paid to an employee

1 under the act of June 2, 1915 (P.L.736, No.338), known as the
2 Workers' Compensation Act, or a comparable workers'
3 compensation law of another jurisdiction.

4 (3) A claim against a business entity that does not
5 constitute a successor asbestos-related liability.

6 (4) An insurance business entity under 15 Pa.C.S. Ch.31
7 (relating to insurance corporations).

8 (5) Obligations arising under the National Labor
9 Relations Act (49 Stat. 449, 29 U.S.C. § 151 et seq.) or
10 under a collective bargaining agreement.

11 (6) A claim against a successor business entity that,
12 after a merger or consolidation, continued in the business of
13 mining asbestos, in the business of selling or distributing
14 asbestos fibers or in the business of manufacturing,
15 distributing, removing or installing asbestos-containing
16 products that were the same or substantially the same as
17 those products previously manufactured, distributed, removed
18 or installed by the transferor.

19 (b) Construction.--Nothing in this subchapter shall affect
20 the scope or effect of 15 Pa.C.S. § 1929.1 (relating to
21 limitations on asbestos-related liabilities relating to certain
22 mergers or consolidations). Limitations under 15 Pa.C.S. §
23 1929.1 shall continue to apply to all asbestos claims.

24 Section 2. This act shall take effect immediately.