

No. 2001-101

AN ACT

SB 216

Amending Titles 15 (Corporations and Unincorporated Associations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for limitations on asbestos-related liabilities relating to certain mergers or consolidations; and further providing for certain statutes of limitations and for certain transfers.

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

Section 1. Title 15 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 1929.1. Limitations on asbestos-related liabilities relating to certain mergers or consolidations.

(a) Limitation on successor asbestos-related liabilities.—

(1) Except as further limited in paragraph (2), the cumulative successor asbestos-related liabilities of a domestic business corporation that was incorporated in this Commonwealth prior to May 1, 2001, shall be limited to the fair market value of the total assets of the transferor determined as of the time of the merger or consolidation, and such corporation shall have no responsibility for successor asbestos-related liabilities in excess of such 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 assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in paragraph (1) for purposes of determining the limitation of liability of a domestic business corporation.

(b) Limitation on total assets available to satisfy successor asbestos-related liabilities.—

(1) Except as further limited in paragraph (2), the assets of a domestic business corporation that was incorporated in this Commonwealth prior to May 1, 2001, shall be exempt from restraint, attachment or execution on judgments related to claims for successor asbestos-related liabilities if the cumulative amounts which, after the time of the merger or consolidation as to which the fair market value of total assets is determined for purposes of this subsection and subsection (a), are paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments or other discharges of claims of asbestos-

related liabilities exceed the fair market value of the total assets of the transferor, determined as of the time of the merger or consolidation.

(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 assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in paragraph (1) for purposes of determining the extent of the exemption of the assets of a domestic business corporation.

(c) Fair market value of total assets.—

(1) A domestic business corporation may establish the fair market value of total assets through any method reasonable under the circumstances, including by reference to the going concern value of such assets or to the purchase price attributable to or paid for such assets in an arm's length transaction, or, in the absence of other readily available information from which fair market value can be determined, by reference to the value of such assets recorded on a balance sheet. Total assets shall include intangible assets. A showing by the domestic business corporation of a reasonable determination of the fair market value of total assets shall be prima facie evidence of their fair market value.

(2) Once a reasonable determination of the fair market value of total assets has been thus established by a domestic business corporation, a claimant disputing that determination of value shall then have the burden of establishing a different fair market value of such assets.

(3) For the purpose of adjusting the limitations set forth in subsections (a) and (b) to account for the passage of time, the fair market value of total assets at the time of a merger or consolidation shall be increased annually until the earlier of:

(i) the date of the settlement, judgment or other discharge to which the limitations in subsection (a) or (b) are being applied; or

(ii) the date on which such adjusted fair market value is first exceeded by the cumulative amounts paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, after the time of the merger or consolidation as to which the fair market value of total assets is determined for purposes of subsections (a) and (b) in connection with settlements, judgments or other discharges of the successor asbestos-related liabilities;

at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since such merger or consolidation, plus 1%, not compounded.

(d) Application.—

(1) The limitations set forth in subsections (a) and (b) shall apply to mergers or consolidations effected under the laws of this

Commonwealth or another jurisdiction consummated prior to May 1, 2001.

(2) The limitations set forth in subsections (a) and (b) shall apply to all asbestos claims, including existing asbestos claims, and all litigation, including existing litigation, and shall apply to successors of a domestic business corporation to which this section applies.

(3) The limitations set forth in subsections (a) and (b) shall not apply to workers' compensation benefits paid by or on behalf of an employer to an employee pursuant to the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, or comparable workers' compensation law of another jurisdiction.

(4) The limitations set forth in subsections (a) and (b) shall not apply to any claim against a domestic business corporation that does not constitute a successor asbestos-related liability.

(5) This section shall not apply to an insurance corporation as defined in section 3102 (relating to definitions).

(6) The limitations set forth in subsections (a) and (b) shall not apply to any obligations arising under the National Labor Relations Act (49 Stat. 449, 29 U.S.C. § 151 et seq.) or under any collective bargaining agreement.

(e) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“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 property damage caused by the installation, presence or removal of asbestos, the health effects of exposure to asbestos, including any claim for personal injury, death, mental or emotional injury, risk of disease or other injury or the costs of medical monitoring or surveillance. The term shall also include any claim made by or on behalf of any person exposed to asbestos or any representative, spouse, parent, child or other relative of any such person.

“Successor asbestos-related liabilities.” Any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due, related in any way to asbestos claims, that were assumed or incurred by a domestic business corporation or foreign business corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related thereto, with or into another domestic business corporation or foreign business corporation effected under the laws of this Commonwealth or another jurisdiction or which are related in any way to asbestos claims based on the exercise of control or the ownership of stock of such corporation prior to such merger or consolidation. The term shall also include liabilities which, after the time of the merger or consolidation as to which the fair market value of total assets is determined for purposes of subsections (a) and (b), were or are paid or

otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments or other discharges in this Commonwealth or another jurisdiction.

“Transferor.” A domestic business corporation or foreign business corporation from which successor asbestos-related liabilities are assumed or incurred.

Section 2. Section 5524 of Title 42 is amended by adding a paragraph to read:

§ 5524. Two year limitation.

The following actions and proceedings must be commenced within two years:

* * *

(8) An action to recover damages for injury to a person or for the death of a person caused by exposure to asbestos shall be commenced within two years from the date on which the person is informed by a licensed physician that the person has been injured by such exposure or upon the date on which the person knew or in the exercise of reasonable diligence should have known that the person had an injury which was caused by such exposure, whichever date occurs first.

Section 3. Section 8128 of Title 42 is amended to read:

§ 8128. Transfer of claim to avoid policy of Commonwealth.

(a) General rule.—It shall be unlawful for any creditor or obligee to commence an action on or to transfer any claim against a resident of this Commonwealth for the purpose of having such claim collected by proceedings in a forum which accords such resident less favorable exemptions from attachment or execution than are accorded by this Commonwealth, or for the purpose of depriving such resident of the right to have his personal earnings while in the hands of his employer exempt from application to the payment of his debts.

(b) Remedy.—In addition to remedy by injunction or otherwise, a resident of this Commonwealth who is aggrieved by any action by a creditor or obligee in violation of subsection (a) shall have a right of action against the creditor or obligee for treble the amount recovered from such resident in violation of this section and reasonable counsel fees. The transfer of any claim against the resident and the commencement of any action thereon outside this Commonwealth shall be prima facie evidence of a purpose to violate the provisions of subsection (a).

(c) *Application to Title 15.—The provisions of this section shall also apply to the limitations set forth in 15 Pa.C.S. § 1929.1 (relating to limitations on asbestos-related liabilities relating to certain mergers or consolidations).*

Section 4. This act shall take effect as follows:

(1) The addition of 42 Pa.C.S. § 5524(8) shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 17th day of December, A.D. 2001.

MARK S. SCHWEIKER