

No. 2014-112

AN ACT

SB 1422

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

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

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

SUBCHAPTER F.1
SUCCESSOR BUSINESS ENTITY LIABILITY

Sec.

8368.1. Legislative findings and declaration.

8368.2. Definitions.

8368.3. Liability.

8368.4. Fair market value.

8368.5. Adjustment of fair market value.

8368.6. Applicability and construction.

§ 8368.1. Legislative findings and declaration.

(a) Findings.—The General Assembly finds that:

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

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

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

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

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

§ 8368.2. Definitions.

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

"Asbestos claim." *A 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 a 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 includes a claim made by or on behalf of any person exposed to asbestos or a representative, spouse, parent, child or other relative of that individual.*

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

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

"Successor asbestos-related liability." *Any asbestos-related liability that was assumed or incurred by a business entity as a result or in connection with a merger or consolidation, or a plan of merger or consolidation related thereto, with or into another business entity formed or organized 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 the business entity prior to the merger or consolidation. The term shall include liabilities which, after the time of the merger or consolidation with a transferor for which the fair market value of the total gross assets of the successor business entity are determined under section 8368.4 (relating to fair market value), were paid, committed to be paid or discharged by or on behalf of the business entity, successor business entity or transferor in connection with a settlement, judgment or discharge in this Commonwealth or another jurisdiction.*

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

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

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

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

§ 8368.3. Liability.

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

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

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

§ 8368.4. Fair market value.

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

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

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

(b) Intangible assets.—Total gross assets under this section shall include intangible assets.

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

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

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

§ 8368.5. Adjustment of fair market value.

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

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

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

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

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

§ 8368.6. Applicability and construction.

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

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

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

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

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

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

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

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

Section 2. This act shall take effect immediately.

APPROVED—The 2nd day of July, A.D. 2014

TOM CORBETT