

## **COMMITTEE BILL ANALYSIS**

**Bill:** Senate Bill 1422

**Printer's No.:** 2141

**Sponsor:** Senator Tomlinson

**Prepared by:** Gregg Warner

**Synopsis:** This bill amends Chapter 83 of the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, to provide for the asbestos-related liability of a successor business entity.

**Summary:** As a general rule a successor business entity's asbestos-related liability is 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.

### **Definitions**

"Asbestos claim" means 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.

"Asbestos-related liability" means 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.

"Successor business entity" means 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; or 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" means a business entity from which successor asbestos-related liabilities are or were assumed or incurred.

### **Fair market value**

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. 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. The fair market value of total gross assets of a transferor shall increase annually at the prime rate plus 1%.

**Applicability**

This legislation shall not apply to:

- (1) An asbestos claim for which the applicable period of limitation commenced on or before the effective date.
- (2) Workers' compensation benefits paid to an employee.
- (3) A claim against a business entity that does not constitute a successor asbestos-related liability.
- (4) An insurance business entity.
- (5) Obligations arising under the National Labor Relations Act.
- (6) A claim against a successor business entity that, after a merger or consolidation, continued in the asbestos business.

**Effective date**

This act takes effect immediately.

**Background:** Senate Bill 1422 includes a legislative findings and intent section. The General Assembly finds that asbestos-related claims threaten the continued viability of successor business entities which are formed or organized under the laws of Pennsylvania or another jurisdiction that never manufactured, sold or distributed asbestos or asbestos-containing products. The viability of these domestic and foreign business entities 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 federal asbestos regulations.

It is the intent of the General Assembly to expand the protections granted in 15 Pa.C.S. §1929.1 to successor business entities which are formed or organized under the laws of this Commonwealth or another jurisdiction.

**2001 Act 101**

2001 Act 101 added section 1929.1 to the Associations Code (Title 15) providing for limitations on asbestos-related liabilities relating to certain mergers or consolidations. Because Act 101 amended Title 15, it only applied to liability imposed by operation of law to a merger consummated under Title 15's merger provisions. It has been argued that section 1929.1 is unconstitutional because it favors in-state companies over similarly situated out-of-state companies. For this reason Senate Bill 1422 amends the Judicial Code, Title 42. Senate Bill 1422 states that it shall not affect the scope or effect of 15 Pa.C.S. §1929.1 and that limitations under that section shall continue to apply to all asbestos claims.