

78B-4-605 Establishing fair market value of total gross assets.

- (1) A successor may establish the fair market value of total gross assets for the purpose of the limitations under Section 78B-4-604 through any method reasonable under the circumstances, including:
 - (a) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or
 - (b) in the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.
- (2) Total gross assets include intangible assets.
- (3)
 - (a) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of the insurance may not be affected by this section, nor shall this section otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract or related agreement including:
 - (i) preenactment settlements resolving coverage-related disputes; and
 - (ii) the rights of an insurer to seek payment of applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods when insurance is uncollectible or otherwise unavailable.
 - (b) Without limiting Subsection (3)(a), to the extent total gross assets include liability insurance, a settlement, or a dispute concerning the liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before May 8, 2012, shall be determinative of the total coverage of the liability insurance to be included in the calculation of the transferor's total gross assets.

Enacted by Chapter 237, 2012 General Session