

103^D CONGRESS
1ST SESSION

H. R. 1258

To amend the Trust Indenture Act of 1939 to require that indentures prohibit corporate acquisitions or reorganizations unless the successor corporation assumes the responsibility to make payments under the indenture.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 1993

Mr. KLECZKA introduced the following bill; which was referred to the
Committee on Energy and Commerce

A BILL

To amend the Trust Indenture Act of 1939 to require that indentures prohibit corporate acquisitions or reorganizations unless the successor corporation assumes the responsibility to make payments under the indenture.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 The Congress finds that—

5 (1) interstate public offerings of debt securities
6 by corporations and other entities that are registered
7 under Federal securities laws are required to be cov-

1 ered by a trust indenture meeting the requirements
2 of the Trust Indenture Act of 1939 (“1939 Act”);

3 (2) a trust indenture is a contractual agreement
4 between the issuer of the debt securities and a finan-
5 cial institution as trustee for the benefit and protec-
6 tion of public debtholders;

7 (3) a trust indenture under the 1939 Act sets
8 forth certain responsibilities and rights of the issuer
9 and the trustee, including the obligation of the is-
10 suer to make payment of interest and principal on
11 the debt securities to debtholders, and it sets forth
12 events of default which can trigger actions by the
13 trustee on behalf of the debtholders to have the de-
14 fault cured or to otherwise obtain payment for debt-
15 holders;

16 (4) the 1939 Act does not, however, contain
17 provisions that would require a successor corporation
18 to the issuer resulting from a merger, consolidation,
19 sale of substantially all of its assets, share exchange
20 or other transaction having substantially equivalent
21 effect, to assume payment responsibility for the
22 predecessor/issuer’s debt securities;

23 (5) sample trust indenture provisions set forth
24 in sections 801 and 802 of the American Bar Foun-
25 dation’s Model Debenture Indenture Provisions

1 (“ABF Model Indenture”, approved and adopted in
2 1967) for registered public offerings of debt securi-
3 ties attempt to deal with the “successor responsibil-
4 ity for payment” situation, but fail to specifically
5 cover “share exchanges” (which are types of cor-
6 porate reorganization transactions developed subse-
7 quent to 1967) or “equivalent effect” transactions;

8 (6) issuers of debt securities are not currently
9 required to include in their trust indentures any sec-
10 tion dealing with the “successor liability for pay-
11 ment” situation, inasmuch as inclusion of the ABF
12 Model Indenture provisions on that subject, in whole
13 or in part, is voluntary by the issuer;

14 (7) certain issuers of debt securities to the pub-
15 lic in registered offerings have engaged in share ex-
16 change transactions (that are substantially equiva-
17 lent to mergers), with successor corporations, where
18 such issuers have sought to avoid successor payment
19 responsibility on the debt securities on the premise
20 that the language of their trust indenture provisions
21 regarding successor payment responsibility does not
22 specifically cover share exchanges nor state that
23 such sections would be applicable to any other trans-
24 actions having effects substantially equivalent to a

1 merger, combination, or sale of substantially all the
2 issuer's assets; and

3 (8) it is appropriate and necessary for the pro-
4 tection of public purchasers of debt securities in
5 publicly registered offerings under the Federal secu-
6 rities laws that trust indentures relating to such
7 debt securities be required under the 1939 Act to
8 have successor payment responsibility provisions,
9 and that such provisions be drafted with language
10 that is both complete and flexible in order to assure
11 that a successor to an issuer of debt securities re-
12 sulting from a merger or equivalent transaction can-
13 not avoid payment responsibility that would disas-
14 trously injure public debtholders.

15 **SEC. 2. AMENDMENT TO THE TRUST INDENTURE ACT OF**
16 **1939.**

17 The Trust Indenture Act of 1939 is amended by add-
18 ing after section 328 (15 U.S.C. 77bbbb) the following
19 new section:

20 "MERGER, CONSOLIDATION, CONVEYANCE, OR TRANSFER.

21 "SEC. 329. (a) CONDITIONS ON TRANSACTION.—An
22 issuer of any security subject to this title shall not consoli-
23 date with or merge into any other corporation or convey
24 or transfer its properties and assets substantially as an
25 entirety to any person, or engage in any equity or share
26 exchange transaction with any other person or with the

1 security holders of any other person which results in a
2 reduction of the assets available to the issuer, or engage
3 in any other transaction having a substantially equivalent
4 effect, unless—

5 “(1) the corporation formed by such consolida-
6 tion or into which the issuer is merged or the person
7 which acquires by conveyance or transfer the prop-
8 erties and assets of the issuer substantially as an en-
9 tirety, or the person which acquires the shares of the
10 issuer or whose equity holders acquire such shares,
11 in a transaction which results in a reduction of the
12 assets available to the issuer, shall be a corporation
13 organized and existing under the laws of the United
14 States of America or any State or the District of Co-
15 lumbia, and shall expressly assume, by an indenture
16 supplemental hereto, executed and delivered to the
17 trustee, in form satisfactory to the trustee, the due
18 and punctual payment of the principal of (and pre-
19 mium, if any) and interest on all the securities and
20 the performance of every covenant of the indenture
21 on the part of the issuer to be performed or ob-
22 served;

23 “(2) immediately after giving effect to such
24 transition, no event of default, and no event which,
25 after notice or lapse of time, or both, would become

1 an event of default, shall have happened and be con-
2 tinuing; and

3 “(3) the issuer has delivered to the trustee an
4 officers’ certificate and an opinion of counsel each
5 stating that such consolidation, merger, conveyance,
6 transfer, equity or share exchange transaction, or
7 transaction having a substantially equivalent effect,
8 and such supplemental indenture comply with this
9 article and that all conditions precedent herein pro-
10 vided for relating to such transaction have been
11 complied with.

12 “(b) RIGHTS AND OBLIGATIONS UNDER INDENTURE
13 OF SUCCESSOR CORPORATION.—Upon any consolidation
14 or merger, or any conveyance or transfer of the properties
15 and assets of the issuer substantially as an entirety, or
16 equity or share exchange transaction described in sub-
17 section (a), or any transaction having a substantially
18 equivalent effect, in accordance with subsection (a), the
19 person subject to subsection (a)(1) shall succeed to, and
20 be substituted for, and may exercise every right and power
21 of, the issuer under the indenture with the same effect
22 as if such successor corporation had been named as the
23 issuer: *Provided, however,* That no such consolidation,
24 merger, conveyance, transfer, or equity or share exchange
25 or other transaction shall have the effect of releasing the

1 issuer, or any successor corporation which shall have be-
2 come a successor by operation of this section from its li-
3 ability as obligor and maker on any of the securities.”.

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