

SUBSTITUTE FOR
SENATE BILL NO. 591

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding chapter 30.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 30.

LIMITATION OF SUCCESSOR ASBESTOS-RELATED LIABILITY

SEC. 3001. AS USED IN THIS CHAPTER:

(A) "ASBESTOS CLAIM" MEANS A CLAIM FOR DAMAGES, LOSS,
INDEMNIFICATION, CONTRIBUTION, OR OTHER RELIEF ARISING OUT OF,
BASED ON, OR IN ANY WAY RELATED TO ASBESTOS, INCLUDING ANY OF THE
FOLLOWING:

(i) A CLAIM BASED ON THE HEALTH EFFECTS OF EXPOSURE TO
ASBESTOS, INCLUDING A CLAIM FOR ANY OF THE FOLLOWING:

(A) PERSONAL INJURY OR DEATH.

1 (B) MENTAL OR EMOTIONAL INJURY.

2 (C) RISK OF DISEASE OR OTHER INJURY.

3 (D) THE COSTS OF MEDICAL MONITORING OR SURVEILLANCE, TO THE
4 EXTENT THOSE CLAIMS ARE RECOGNIZED UNDER STATE LAW.

5 (ii) A CLAIM MADE BY OR ON BEHALF OF A PERSON EXPOSED TO
6 ASBESTOS, OR BY OR ON BEHALF OF A REPRESENTATIVE, SPOUSE, PARENT,
7 CHILD, OR OTHER RELATIVE OF THE PERSON.

8 (iii) A CLAIM FOR DAMAGES OR LOSS CAUSED BY THE INSTALLATION,
9 PRESENCE, OR REMOVAL OF ASBESTOS.

10 (B) "CORPORATION" MEANS A CORPORATION ORGANIZED FOR PROFIT,
11 WHETHER ORGANIZED UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR A
12 FOREIGN NATION.

13 (C) "SUCCESSOR" MEANS A CORPORATION THAT ASSUMES OR INCURS, OR
14 HAS ASSUMED OR INCURRED, A SUCCESSOR ASBESTOS-RELATED LIABILITY.

15 (D) "SUCCESSOR ASBESTOS-RELATED LIABILITY" MEANS A LIABILITY,
16 WHETHER KNOWN OR UNKNOWN, ASSERTED OR UNASSERTED, ABSOLUTE OR
17 CONTINGENT, ACCRUED OR UNACCRUED, LIQUIDATED OR UNLIQUIDATED, OR
18 DUE OR TO BECOME DUE, THAT IS RELATED IN ANY WAY TO AN ASBESTOS
19 CLAIM AND THAT WAS ASSUMED OR INCURRED BY A CORPORATION AS A RESULT
20 OF OR IN CONNECTION WITH A MERGER OR CONSOLIDATION OR A PLAN OF
21 MERGER OR CONSOLIDATION WITH OR INTO ANOTHER CORPORATION OR THAT IS
22 RELATED IN ANY WAY TO AN ASBESTOS CLAIM BASED ON THE EXERCISE OF
23 CONTROL OR THE OWNERSHIP OF STOCK OF THE OTHER CORPORATION BEFORE
24 THE MERGER OR CONSOLIDATION. SUCCESSOR ASBESTOS-RELATED LIABILITY
25 INCLUDES LIABILITY THAT, AFTER A MERGER OR CONSOLIDATION FOR WHICH
26 THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS IS DETERMINED UNDER
27 SECTION 3004, IS PAID OR OTHERWISE DISCHARGED, OR IS COMMITTED TO

1 BE PAID OR OTHERWISE DISCHARGED, BY OR ON BEHALF OF THE
2 CORPORATION, BY A SUCCESSOR OF THE CORPORATION, OR BY OR ON BEHALF
3 OF A TRANSFEROR, IN CONNECTION WITH A SETTLEMENT, JUDGMENT, OR
4 OTHER DISCHARGE OF LIABILITY IN THIS STATE, ANOTHER STATE, OR A
5 FOREIGN NATION.

6 (E) "TRANSFEROR" MEANS A CORPORATION FROM WHICH A SUCCESSOR
7 ASBESTOS-RELATED LIABILITY IS ASSUMED OR INCURRED.

8 SEC. 3002. (1) THE LIMITATIONS IN SECTION 3003 APPLY TO A
9 CORPORATION THAT BECAME A SUCCESSOR BEFORE JANUARY 1, 1972 OR THAT
10 IS A SUCCESSOR TO SUCH A CORPORATION.

11 (2) THE LIMITATIONS IN SECTION 3003 DO NOT APPLY TO ANY OF THE
12 FOLLOWING:

13 (A) A CLAIM FOR WORKERS' COMPENSATION BENEFITS PAID BY OR ON
14 BEHALF OF AN EMPLOYER TO AN EMPLOYEE UNDER THE WORKER'S DISABILITY
15 COMPENSATION ACT OF 1969, 1969 PA 317, MCL 418.101 TO 418.941, OR A
16 COMPARABLE WORKERS' COMPENSATION LAW OF ANOTHER JURISDICTION.

17 (B) A CLAIM AGAINST A CORPORATION THAT IS NOT A SUCCESSOR
18 ASBESTOS-RELATED LIABILITY.

19 (C) AN OBLIGATION UNDER THE NATIONAL LABOR RELATIONS ACT, 29
20 USC 151 TO 169, OR UNDER A COLLECTIVE BARGAINING AGREEMENT.

21 SEC. 3003. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE
22 CUMULATIVE SUCCESSOR ASBESTOS-RELATED LIABILITY OF A CORPORATION IS
23 LIMITED TO THE FAIR MARKET VALUE OF THE TOTAL GROSS ASSETS OF THE
24 TRANSFEROR DETERMINED AT THE TIME OF THE MERGER OR CONSOLIDATION
25 AND ADJUSTED AS PROVIDED IN SECTION 3005. THE CORPORATION DOES NOT
26 HAVE ANY RESPONSIBILITY FOR SUCCESSOR ASBESTOS-RELATED LIABILITY IN
27 EXCESS OF THIS LIMITATION.

1 (2) IF THE TRANSFEROR ASSUMED OR INCURRED SUCCESSOR ASBESTOS-
2 RELATED LIABILITY IN CONNECTION WITH A PRIOR MERGER OR
3 CONSOLIDATION WITH A PRIOR TRANSFEROR, THE LIMITATION OF LIABILITY
4 OF THE CORPORATION UNDER SUBSECTION (1) IS THE FAIR MARKET VALUE OF
5 THE TOTAL ASSETS OF THE PRIOR TRANSFEROR, DETERMINED AT THE TIME OF
6 THE PRIOR MERGER OR CONSOLIDATION AND ADJUSTED AS PROVIDED IN
7 SECTION 3005.

8 SEC. 3004. (1) THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS FOR
9 PURPOSES OF SECTION 3003 MAY BE ESTABLISHED BY ANY METHOD
10 REASONABLE UNDER THE CIRCUMSTANCES, INCLUDING BY REFERENCE TO ANY
11 OF THE FOLLOWING:

12 (A) THE GOING CONCERN VALUE OF THE ASSETS.

13 (B) THE PURCHASE PRICE ATTRIBUTABLE TO OR PAID FOR THE ASSETS
14 IN AN ARM'S-LENGTH TRANSACTION.

15 (C) IF THERE IS NO OTHER READILY AVAILABLE INFORMATION FROM
16 WHICH FAIR MARKET VALUE CAN BE DETERMINED, THE VALUE OF THE ASSETS
17 RECORDED ON A BALANCE SHEET.

18 (2) IN DETERMINING THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS
19 UNDER SECTION 3003, TOTAL GROSS ASSETS INCLUDE BOTH OF THE
20 FOLLOWING:

21 (A) INTANGIBLE ASSETS.

22 (B) THE AMOUNT OF ANY LIABILITY INSURANCE ISSUED TO THE
23 TRANSFEROR THAT PROVIDES COVERAGE FOR SUCCESSOR ASBESTOS-RELATED
24 LIABILITIES, DETERMINED, IF APPLICABLE, UNDER SUBSECTION (3) (B).

25 (3) IF THE TOTAL GROSS ASSETS INCLUDE AN AMOUNT FOR LIABILITY
26 INSURANCE UNDER SUBSECTION (2) (B), BOTH OF THE FOLLOWING APPLY:

27 (A) THE APPLICABILITY, ASSIGNABILITY, TERMS, CONDITIONS, AND

1 LIMITS OF THE INSURANCE ARE NOT AFFECTED BY THIS CHAPTER, AND THIS
2 CHAPTER DOES NOT OTHERWISE AFFECT THE RIGHTS AND OBLIGATIONS OF A
3 TRANSFEROR, SUCCESSOR, OR INSURER UNDER AN INSURANCE CONTRACT OR
4 RELATED AGREEMENTS, INCLUDING RIGHTS AND OBLIGATIONS UNDER
5 SETTLEMENTS REACHED BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT
6 THAT ADDED THIS CHAPTER BETWEEN A TRANSFEROR OR SUCCESSOR AND ITS
7 INSURERS RESOLVING LIABILITY INSURANCE COVERAGE AND THE RIGHTS OF
8 AN INSURER TO SEEK PAYMENT FOR APPLICABLE DEDUCTIBLES,
9 RETROSPECTIVE PREMIUMS, OR SELF-INSURED RETENTIONS OR TO SEEK
10 CONTRIBUTION FROM A SUCCESSOR FOR UNINSURED OR SELF-INSURED PERIODS
11 OR PERIODS FOR WHICH INSURANCE IS UNCOLLECTIBLE OR OTHERWISE
12 UNAVAILABLE.

13 (B) IF THERE IS A SETTLEMENT OF A DISPUTE CONCERNING THE
14 INSURANCE COVERAGE BETWEEN THE TRANSFEROR OR SUCCESSOR AND ITS
15 INSURERS BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
16 THIS CHAPTER, THE AMOUNT OF THE SETTLEMENT IS THE AMOUNT OF THE
17 LIABILITY INSURANCE TO BE INCLUDED IN THE TOTAL GROSS ASSETS.

18 SEC. 3005. (1) SUBJECT TO SUBSECTIONS (2) TO (4), IN
19 DETERMINING A LIMIT OF LIABILITY UNDER SECTION 3003, THE FAIR
20 MARKET VALUE OF TOTAL GROSS ASSETS AT THE TIME OF A MERGER OR
21 CONSOLIDATION SHALL BE INCREASED FOR EACH YEAR SINCE THE MERGER OR
22 CONSOLIDATION BY A PERCENTAGE EQUAL TO 1% PLUS THE ADJUSTED PRIME
23 RATE FOR THE 6-MONTH PERIOD ENDING MARCH 31 OF THAT CALENDAR YEAR
24 AS DETERMINED UNDER SECTION 23 OF 1941 PA 122, MCL 205.23.

25 (2) AN INCREASE UNDER SUBSECTION (1) SHALL NOT BE COMPOUNDED.

26 (3) THE ADJUSTMENT UNDER SUBSECTION (1) CONTINUES UNTIL THE
27 DATE THE ADJUSTED VALUE IS FIRST EXCEEDED BY THE CUMULATIVE AMOUNTS

1 OF SUCCESSOR ASBESTOS-RELATED LIABILITIES PAID OR COMMITTED TO BE
2 PAID BY OR ON BEHALF OF THE CORPORATION OR A PREDECESSOR, OR BY OR
3 ON BEHALF OF A TRANSFEROR, AFTER THE TIME OF THE MERGER OR
4 CONSOLIDATION FOR WHICH THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS
5 IS DETERMINED.

6 (4) THE AMOUNT OF ANY LIABILITY INSURANCE COVERAGE INCLUDED IN
7 THE TOTAL GROSS ASSETS UNDER SECTION 3004(2)(B) SHALL NOT BE
8 INCLUDED IN THE ADJUSTMENT UNDER THIS SECTION.

9 SEC. 3006. A COURT SHALL, TO THE FULLEST EXTENT PERMISSIBLE,
10 LIBERALLY APPLY THE LIMITATION IN LIABILITY UNDER THIS CHAPTER IN
11 AN ACTION THAT INCLUDES SUCCESSOR ASBESTOS-RELATED LIABILITY. A
12 COURT SHALL APPLY PROCEDURAL PROVISIONS OF THIS CHAPTER
13 RETROACTIVELY. HOWEVER, IF THE APPLICATION OF A PROVISION OF THIS
14 CHAPTER WOULD UNCONSTITUTIONALLY AFFECT A VESTED RIGHT, THE
15 PROVISION SHALL ONLY BE APPLIED PROSPECTIVELY.

16 SEC. 3007. THIS CHAPTER APPLIES TO AN ACTION THAT INCLUDES AN
17 ASBESTOS CLAIM TO WHICH EITHER OF THE FOLLOWING APPLIES:

18 (A) THE ACTION IS FILED ON OR AFTER THE EFFECTIVE DATE OF THE
19 AMENDATORY ACT THAT ADDED THIS CHAPTER.

20 (B) THE ACTION IS PENDING BUT TRIAL OF THE ACTION HAS NOT
21 COMMENCED AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
22 THIS CHAPTER.

23 SEC. 3008. AS PROVIDED IN SECTION 5 OF 1846 RS 1, MCL 8.5,
24 THIS CHAPTER IS SEVERABLE.