

SENATE BILL No. 591

June 19, 2007, Introduced by Senators KUIPERS, CROPSEY, SANBORN and ALLEN and referred to the Committee on Judiciary.

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, BUT NOT
LIMITED TO, ANY OF THE FOLLOWING:

(i) A CLAIM BASED ON THE HEALTH EFFECTS OF EXPOSURE TO
ASBESTOS, INCLUDING, BUT NOT LIMITED TO, A CLAIM FOR ANY OF THE
FOLLOWING:

1 (A) PERSONAL INJURY OR DEATH.

2 (B) MENTAL OR EMOTIONAL INJURY.

3 (C) RISK OF DISEASE OR OTHER INJURY.

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

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

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

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

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

16 (D) "SUCCESSOR ASBESTOS-RELATED LIABILITY" MEANS A LIABILITY,
17 WHETHER KNOWN OR UNKNOWN, ASSERTED OR UNASSERTED, ABSOLUTE OR
18 CONTINGENT, ACCRUED OR UNACCRUED, LIQUIDATED OR UNLIQUIDATED, OR
19 DUE OR TO BECOME DUE, THAT IS RELATED IN ANY WAY TO AN ASBESTOS
20 CLAIM AND THAT WAS ASSUMED OR INCURRED BY A CORPORATION AS A RESULT
21 OF OR IN CONNECTION WITH A MERGER OR CONSOLIDATION OR A PLAN OF
22 MERGER OR CONSOLIDATION WITH OR INTO ANOTHER CORPORATION OR THAT IS
23 RELATED IN ANY WAY TO AN ASBESTOS CLAIM BASED ON THE EXERCISE OF
24 CONTROL OR THE OWNERSHIP OF STOCK OF THE OTHER CORPORATION BEFORE
25 THE MERGER OR CONSOLIDATION. SUCCESSOR ASBESTOS-RELATED LIABILITY
26 INCLUDES, BUT IS NOT LIMITED TO, LIABILITY THAT, AFTER A MERGER OR
27 CONSOLIDATION FOR WHICH THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS

1 IS DETERMINED UNDER SECTION 3004, IS PAID OR OTHERWISE DISCHARGED,
2 OR IS COMMITTED TO BE PAID OR OTHERWISE DISCHARGED, BY OR ON BEHALF
3 OF THE CORPORATION, BY A SUCCESSOR OF THE CORPORATION, OR BY OR ON
4 BEHALF OF A TRANSFEROR, IN CONNECTION WITH A SETTLEMENT, JUDGMENT,
5 OR OTHER DISCHARGE OF LIABILITY IN THIS STATE, ANOTHER STATE, OR A
6 FOREIGN NATION.

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

9 SEC. 3002. (1) THE LIMITATIONS IN SECTION 3003 APPLY TO A
10 CORPORATION THAT IS INCORPORATED UNDER THE LAWS OF THIS STATE OR
11 ANOTHER STATE, HAS FILED A CERTIFICATE OF AUTHORITY TO TRANSACT
12 BUSINESS IN THIS STATE, OR HAS DONE BUSINESS IN THIS STATE AND THAT
13 IS A SUCCESSOR OR A SUCCESSOR TO A SUCCESSOR.

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

16 (A) A CLAIM FOR WORKERS' COMPENSATION BENEFITS PAID BY OR ON
17 BEHALF OF AN EMPLOYER TO AN EMPLOYEE UNDER THE WORKER'S DISABILITY
18 COMPENSATION ACT OF 1969, 1969 PA 317, MCL 418.101 TO 418.941, OR A
19 COMPARABLE WORKERS' COMPENSATION LAW OF ANOTHER STATE OR A FOREIGN
20 NATION.

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

23 (C) AN INSURANCE CORPORATION.

24 (D) AN OBLIGATION UNDER THE NATIONAL LABOR RELATIONS ACT, 29
25 USC 151 TO 169, OR UNDER A COLLECTIVE BARGAINING AGREEMENT.

26 SEC. 3003. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE
27 CUMULATIVE SUCCESSOR ASBESTOS-RELATED LIABILITY OF A CORPORATION IS

1 LIMITED TO THE FAIR MARKET VALUE OF THE TOTAL GROSS ASSETS OF THE
2 TRANSFEROR DETERMINED AT THE TIME OF THE MERGER OR CONSOLIDATION
3 AND ADJUSTED AS PROVIDED IN SECTION 3005.

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

11 SEC. 3004. (1) THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS FOR
12 PURPOSES OF SECTION 3003 MAY BE ESTABLISHED BY ANY METHOD
13 REASONABLE UNDER THE CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO,
14 BY REFERENCE TO ANY OF THE FOLLOWING:

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

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

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

21 (2) IN DETERMINING THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS
22 UNDER SECTION 3003, TOTAL GROSS ASSETS INCLUDE, BUT ARE NOT LIMITED
23 TO, BOTH OF THE FOLLOWING:

24 (A) INTANGIBLE ASSETS.

25 (B) THE AMOUNT OF AGGREGATE COVERAGE UNDER A LIABILITY
26 INSURANCE POLICY ISSUED TO THE TRANSFEROR THAT HAS BEEN COLLECTED
27 OR IS COLLECTIBLE TO COVER SUCCESSOR ASBESTOS-RELATED LIABILITIES,

1 EXCEPT COMPENSATION FOR LIABILITY ARISING FROM WORKERS' EXPOSURE TO
2 ASBESTOS SOLELY DURING THE COURSE OF EMPLOYMENT BY THE TRANSFEROR.
3 A SETTLEMENT OF A DISPUTE CONCERNING THE INSURANCE COVERAGE ENTERED
4 INTO BY THE TRANSFEROR OR SUCCESSOR AND THE INSURER BEFORE THE
5 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS CHAPTER IS
6 DETERMINATIVE OF THE AMOUNT OF AGGREGATE COVERAGE TO BE INCLUDED IN
7 DETERMINING THE TOTAL GROSS ASSETS.

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

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

16 (3) THE ADJUSTMENT UNDER SUBSECTION (1) CONTINUES UNTIL THE
17 DATE THE ADJUSTED VALUE IS FIRST EXCEEDED BY THE CUMULATIVE AMOUNTS
18 OF SUCCESSOR ASBESTOS-RELATED LIABILITIES PAID OR COMMITTED TO BE
19 PAID BY OR ON BEHALF OF THE CORPORATION OR A PREDECESSOR, OR BY OR
20 ON BEHALF OF A TRANSFEROR, AFTER THE TIME OF THE MERGER OR
21 CONSOLIDATION FOR WHICH THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS
22 IS DETERMINED.

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

26 SEC. 3006. A COURT IN THIS STATE SHALL APPLY THIS STATE'S
27 SUBSTANTIVE LAW, INCLUDING THE LIMITATION IN LIABILITY UNDER THIS

1 CHAPTER, IN AN ACTION THAT INCLUDES SUCCESSOR ASBESTOS-RELATED
2 LIABILITY.

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

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

7 (B) THE ACTION IS PENDING BUT TRIAL OF THE ACTION HAS NOT
8 COMMENCED AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
9 THIS CHAPTER.