HOUSE BILL No. 4601

May 3, 2011, Introduced by Reps. Haveman, Lyons, Walsh, Lund, Tyler, Huuki, Heise, Shirkey, Jenkins, McMillin, Genetski, Ouimet, Kowall, Wayne Schmidt, Roy Schmidt, Liss, Denby, Bledsoe, Gilbert and Rogers 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. (1) AS USED IN THIS SECTION:

(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:

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(A) PERSONAL INJURY OR DEATH.

(B) MENTAL OR EMOTIONAL INJURY.

(C) RISK OF DISEASE OR OTHER INJURY.

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

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

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

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

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

(D) "SUCCESSOR ASBESTOS-RELATED LIABILITY" MEANS A LIABILITY, WHETHER KNOWN OR UNKNOWN, ASSERTED OR UNASSERTED, ABSOLUTE OR CONTINGENT, ACCRUED OR UNACCRUED, LIQUIDATED OR UNLIQUIDATED, OR DUE OR TO BECOME DUE, THAT IS RELATED IN ANY WAY TO AN ASBESTOS CLAIM AND THAT WAS ASSUMED OR INCURRED BY A CORPORATION AS A RESULT OF OR IN CONNECTION WITH A MERGER OR CONSOLIDATION OR A PLAN OF MERGER OR CONSOLIDATION WITH OR INTO ANOTHER CORPORATION OR THAT IS RELATED IN ANY WAY TO AN ASBESTOS CLAIM BASED ON THE EXERCISE OF CONTROL OR THE OWNERSHIP OF STOCK OF THE OTHER CORPORATION BEFORE THE MERGER OR CONSOLIDATION. SUCCESSOR ASBESTOS-RELATED LIABILITY INCLUDES LIABILITY THAT, AFTER A MERGER OR CONSOLIDATION FOR WHICH THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS, AS DETERMINED UNDER

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SUBSECTIONS (6) TO (8), IS PAID OR OTHERWISE DISCHARGED, OR IS COMMITTED TO BE PAID OR OTHERWISE DISCHARGED, BY OR ON BEHALF OF THE CORPORATION, BY A SUCCESSOR OF THE CORPORATION, OR BY OR ON BEHALF OF A TRANSFEROR, IN CONNECTION WITH A SETTLEMENT, JUDGMENT, OR OTHER DISCHARGE OF LIABILITY IN THIS STATE, ANOTHER STATE, OR A FOREIGN NATION.

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

(2) THE LIMITATIONS IN SUBSECTION (4) APPLY TO A CORPORATION THAT BECAME A SUCCESSOR BEFORE JANUARY 1, 1972 OR THAT IS A SUCCESSOR TO SUCH A CORPORATION.

(3) THE LIMITATIONS IN SUBSECTION (4) DO NOT APPLY TO ANY OF THE FOLLOWING:

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

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

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

[(D) A SUCCESSOR THAT, AFTER THE MERGER OR CONSOLIDATION, CONTINUED IN THE BUSINESS OF MINING ASBESTOS, SELLING OR DISTRIBUTING ASBESTOS FIBERS, OR MANUFACTURING, DISTRIBUTING, REMOVING, OR INSTALLING PRODUCTS THAT CONTAINED ASBESTOS THAT WERE THE SAME OR SUBSTANTIALLY THE SAME AS THE PRODUCTS PREVIOUSLY MANUFACTURED, DISTRIBUTED, REMOVED, OR INSTALLED BY THE TRANSFEROR.]

(4) EXCEPT AS PROVIDED IN SUBSECTION (5), THE CUMULATIVE SUCCESSOR ASBESTOS-RELATED LIABILITY OF A CORPORATION IS LIMITED TO THE FAIR MARKET VALUE OF THE TOTAL GROSS ASSETS OF THE TRANSFEROR DETERMINED AT THE TIME OF THE MERGER OR CONSOLIDATION AND ADJUSTED AS PROVIDED IN SUBSECTION (9). THE CORPORATION DOES NOT HAVE ANY RESPONSIBILITY FOR SUCCESSOR ASBESTOS-RELATED LIABILITY IN EXCESS

OF THIS LIMITATION.

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

(6) THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS FOR PURPOSES OF SUBSECTION (4) MAY BE ESTABLISHED BY ANY METHOD REASONABLE UNDER THE CIRCUMSTANCES, INCLUDING BY REFERENCE TO ANY OF THE FOLLOWING:

(A) THE GOING CONCERN VALUE OF THE ASSETS.

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

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

(7) IN DETERMINING THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS UNDER SUBSECTION (4), TOTAL GROSS ASSETS INCLUDE BOTH OF THE FOLLOWING:

(A) INTANGIBLE ASSETS.

(B) THE AMOUNT OF ANY LIABILITY INSURANCE ISSUED TO THE TRANSFEROR THAT PROVIDES COVERAGE FOR SUCCESSOR ASBESTOS-RELATED LIABILITIES, DETERMINED, IF APPLICABLE, UNDER SUBSECTION (8)(B).

(8) IF THE TOTAL GROSS ASSETS INCLUDE AN AMOUNT FOR LIABILITY INSURANCE UNDER SUBSECTION (7)(B), BOTH OF THE FOLLOWING APPLY:

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

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

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

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

(10) AN INCREASE UNDER SUBSECTION (9) SHALL NOT BE COMPOUNDED.

(11) THE ADJUSTMENT UNDER SUBSECTION (9) CONTINUES UNTIL THE DATE THE ADJUSTED VALUE IS FIRST EXCEEDED BY THE CUMULATIVE AMOUNTS

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

(12) THE AMOUNT OF ANY LIABILITY INSURANCE COVERAGE INCLUDED IN THE TOTAL GROSS ASSETS UNDER SUBSECTION (7)(B) SHALL NOT BE INCLUDED IN THE ADJUSTMENT UNDER THIS SUBSECTION (9).

(13) A COURT SHALL, TO THE FULLEST EXTENT PERMISSIBLE, LIBERALLY APPLY THE LIMITATION IN LIABILITY UNDER THIS SECTION IN AN ACTION THAT INCLUDES SUCCESSOR ASBESTOS-RELATED LIABILITY. A COURT SHALL APPLY PROCEDURAL PROVISIONS OF THIS SECTION RETROACTIVELY. HOWEVER, IF THE APPLICATION OF A PROVISION OF THIS SECTION WOULD UNCONSTITUTIONALLY AFFECT A VESTED RIGHT, THE PROVISION SHALL ONLY BE APPLIED PROSPECTIVELY.

(14) THIS SECTION APPLIES TO AN ACTION THAT INCLUDES AN ASBESTOS CLAIM TO WHICH EITHER OF THE FOLLOWING APPLIES:

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

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

(15) AS PROVIDED IN SECTION 5 OF 1846 RS 1, MCL 8.5, THIS SECTION IS SEVERABLE.