

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:

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 LIABILITY THAT, AFTER A MERGER OR CONSOLIDATION FOR WHICH
27 THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS, AS DETERMINED UNDER

1 SUBSECTIONS (6) TO (8), IS PAID OR OTHERWISE DISCHARGED, OR IS
2 COMMITTED TO BE PAID OR OTHERWISE DISCHARGED, BY OR ON BEHALF OF
3 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 (2) THE LIMITATIONS IN SUBSECTION (4) APPLY TO A CORPORATION
10 THAT BECAME A SUCCESSOR BEFORE JANUARY 1, 1972 OR THAT IS A
11 SUCCESSOR TO SUCH A CORPORATION.

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

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

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

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

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

1 OF THIS LIMITATION.

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

9 (6) THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS FOR PURPOSES
10 OF SUBSECTION (4) MAY BE ESTABLISHED BY ANY METHOD REASONABLE UNDER
11 THE CIRCUMSTANCES, INCLUDING BY REFERENCE TO ANY 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 (7) IN DETERMINING THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS
19 UNDER SUBSECTION (4), 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 (8)(B).

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

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

1 LIMITS OF THE INSURANCE ARE NOT AFFECTED BY THIS SECTION, AND THIS
2 SECTION 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 SECTION 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 SECTION, THE AMOUNT OF THE SETTLEMENT IS THE AMOUNT OF THE
17 LIABILITY INSURANCE TO BE INCLUDED IN THE TOTAL GROSS ASSETS.

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

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

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

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

16 (14) THIS SECTION 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 SECTION.

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 SECTION.

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