

HOUSE BILL No. 5167

June 25, 2009, Introduced by Reps. Meadows and Schuitmaker 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:

(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, AS DETERMINED UNDER
27 SUBSECTIONS (6) TO (8), IS PAID OR OTHERWISE DISCHARGED, OR IS

1 COMMITTED TO BE PAID OR OTHERWISE DISCHARGED, BY OR ON BEHALF OF
2 THE CORPORATION, BY A SUCCESSOR OF THE CORPORATION, OR BY OR ON
3 BEHALF OF A TRANSFEROR, IN CONNECTION WITH A SETTLEMENT, JUDGMENT,
4 OR 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 (2) THE LIMITATIONS IN SUBSECTION (4) APPLY TO A CORPORATION
9 THAT BECAME A SUCCESSOR BEFORE JANUARY 1, 1972 OR THAT IS A
10 SUCCESSOR TO SUCH A CORPORATION.

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

1 (5) 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 (4) 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 SUBSECTION (9).

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

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

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

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

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

20 (A) INTANGIBLE ASSETS.

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

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

26 (A) THE APPLICABILITY, ASSIGNABILITY, TERMS, CONDITIONS, AND
27 LIMITS OF THE INSURANCE ARE NOT AFFECTED BY THIS SECTION, AND THIS

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

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

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

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

25 (11) THE ADJUSTMENT UNDER SUBSECTION (9) CONTINUES UNTIL THE
26 DATE THE ADJUSTED VALUE IS FIRST EXCEEDED BY THE CUMULATIVE AMOUNTS
27 OF SUCCESSOR ASBESTOS-RELATED LIABILITIES PAID OR COMMITTED TO BE

1 PAID BY OR ON BEHALF OF THE CORPORATION OR A PREDECESSOR, OR BY OR
2 ON BEHALF OF A TRANSFEROR, AFTER THE TIME OF THE MERGER OR
3 CONSOLIDATION FOR WHICH THE FAIR MARKET VALUE OF TOTAL GROSS ASSETS
4 IS DETERMINED.

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

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

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

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

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

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