

ASBESTOS: SUCCESSOR CORPORATION LIABILITY

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House Bill 4601

Sponsor: Rep. Joe Haverman

Committee: Judiciary

Complete to 10-19-11

A SUMMARY OF HOUSE BILL 4601 AS INTRODUCED 5-3-11

The bill would limit the liability of a successor corporation that acquired or merged – before 1972 – with a predecessor corporation that had engaged in asbestos-related activities.

Currently, under the rule of successor liability, a successor corporation (one that acquires or merges with another) can be held liable for any civil actions filed against the business acquired (predecessor corporation), up to the total value of the successor corporation, even if it did nothing to create the liability or the liability had been created before the merger or acquisition.

CONTENT:

House Bill 4601 would add Chapter 30, entitled "Limitation of Successor Asbestos-Related Liability," to the Revised Judicature Act. The new section would limit the liability of a successor corporation that acquired or merged – before 1972 – with a predecessor corporation that had engaged in asbestos-related activities. Among other things, the bill would:

- Apply the liability limitations to a corporation that became a successor before January 1, 1972, or that is a successor to such a corporation.
- Limit the cumulative successor asbestos-related liability of a corporation to the fair market value of the total gross assets of the transferor (as established in the bill) determined at the time of the merger or consolidation and adjusted as specified in the bill. The corporation would have no responsibility for successor asbestos-related liability in excess of this limitation.
- Require a court to liberally apply, to the fullest extent permissible, the limitation in liability under the bill in an action that included successor asbestos-related liability.
- Apply the bill's provisions to actions that include an asbestos claim that was filed on or after the bill's effective date or that was pending but trial of the action had not begun as of the bill's effective date.
- Exclude from the liability limitations a claim for workers' compensation benefits paid to an employee under the Worker's Disability Compensation Act; a claim against a corporation that is not a successor asbestos-related liability; and an obligation under the National Labor Relations Act or under a collective bargaining agreement.

- Require procedural provisions of the bill to be applied retroactively. However, if an application of the bill would unconstitutionally affect a vested right, the provision would only be applied prospectively.
- Define several terms, including "asbestos claim," "successor," "successor asbestos-related liability," and "transferor."
- Specify that the bill's provisions are severable.

MCL 600.3001

BACKGROUND INFORMATION:

House Bill 4601 is a reintroduction of legislation introduced in the 2007-2008 (SB 591) and 2009-2010 (HB 5167) legislative sessions and would address the situation one successor corporation has experienced since acquiring a company that at one time made, sold, and installed asbestos insulation. The following information was contained in the analysis prepared by the Senate Fiscal Agency on the Senate-passed version of SB 591, dated 8-13-08, and was based on information provided by the American Legislative Exchange Council:

Crown Cork & Seal, the inventor of the bottle cap, purchased a majority of the stock of Mundet Cork in November 1963. Mundet was another company that made bottle caps. Before the acquisition, Mundet also had a small side business making, selling, and installing asbestos insulation. By the time of the stock purchase, Mundet had shut down its insulation operations.

Within 93 days after Crown obtained its stock ownership in Mundet for approximately \$7 million, that company sold off what was left of its insulation division, including idle machinery, leftover inventory, and customer lists. Mundet also signed a covenant not to get into the insulation business again after the sale. Subsequently, Crown acquired all of Mundet's stock and Mundet, having only bottle-cap operations, was merged into Crown in January 1966.

The merger of Mundet Cork into Crown has led to more than 300,000 asbestos-related claims against Crown. As the successor corporation, Crown has paid almost \$600 million in asbestos-related costs.

FISCAL IMPACT:

The bill would have no fiscal impact on the judicial branch.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.