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S.B. 591: COMMITTEE SUMMARY

Senate Bill 591 (as introduced 6-19-07) Sponsor: Senator Wayne Kuipers

Committee: Judiciary

Date Completed: 6-19-07

#### CONTENT

The bill would add Chapter 30 (Limitation of Successor Asbestos-Related Liability) to the Revised Judicature Act to establish limits on the asbestos-related liability of a corporation that assumed or incurred the liability as a result of a merger or consolidation with another corporation. The bill would do all of the following:

- -- Limit the successor corporation's cumulative asbestos-related liability to the fair market value of the transferring corporation's total gross assets.
- -- Specify that the limitations would not apply in certain situations, including a workers' compensation claim.
- -- Describe how fair market value of total gross assets would be established and adjusted.
- -- Require Michigan courts to apply the liability limitations in actions that included successor asbestos-related liability.
- -- Specify that Chapter 30 would apply to asbestos claim actions filed after the bill's effective date and to those pending as of that date whose trial had not yet begun.

### **Liability Limitations**

The cumulative "successor asbestos-related liability" of a corporation would be 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 below. If the transferor assumed or incurred successor asbestos-related liability in connection with a prior merger or consolidation with another transferor, however, the limitation of liability of the corporation would be the fair market value of the total assets of the earlier transferor, determined at the time of that merger or consolidation, and adjusted as provided below.

The limitations would apply to a corporation that was incorporated under the laws of this State or another state, had filed a certificate of authority to transact business in Michigan, or had done business in Michigan and that was a successor or a successor to a successor.

The limitations would not apply to any of the following:

- -- A claim for workers' compensation benefits paid by or on behalf of an employer to an employee under the Worker's Disability Compensation Act or a comparable workers' compensation law of another state or a foreign nation.
- -- A claim against a corporation that was not a successor asbestos-related liability.
- -- An insurance corporation.

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-- An obligation under either the National Labor Relations Act or a collective bargaining agreement.

"Successor asbestos-related liability" would mean 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. The term would include liability that, after a merger or consolidation for which the fair market value of total gross assets is determined under the bill, 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 transfer, in connection with a settlement, judgment, or other discharge of liability in this State, another state, or a foreign nation.

"Transferor" would mean a corporation from which a successor asbestos-related liability is assumed or incurred. "Successor" would mean a corporation that assumes or incurs, or has assumed or incurred, a successor asbestos-related liability. "Corporation" would mean a corporation organized for profit, whether organized under the laws of this State, another state, or a foreign nation.

"Asbestos claim" would mean a claim for damages, loss, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including a claim that is any of the following:

- -- Based on the health effects of exposure to asbestos, including personal injury or death; mental or emotional injury; risk of disease or other injury; or the total costs of medical monitoring or surveillance, to the extent those claims are recognized under State law.
- -- 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.
- -- For damages or loss caused by the installation, presence, or removal of asbestos.

#### Fair Market Value of Total Gross Assets

The fair market value of total gross assets could be established by any method reasonable under the circumstances, including by reference to any of the following:

- -- The going concern value of the assets.
- -- The purchase price attributable to or paid for the assets in an arm's-length transaction.
- -- The value of the assets recorded on a balance sheet, if there were no other readily available information from which fair market value could be determined.

In determining the fair market value of total gross assets, total gross assets would include both intangible assets and the amount of aggregate coverage under a liability insurance policy issued to the transferor that had been collected or was collectible to cover successor asbestos-related liabilities, except compensation for liability arising from workers' exposure to asbestos solely during the course of employment by the transferor. A settlement of a dispute concerning the insurance coverage entered into by the transferor or successor and the insurer before the bill's effective date would be determinative of the amount of aggregate coverage to be included in determining the total gross assets.

## Adjustment of Fair Market Value

In determining a limit of liability under Chapter 30, the fair market value of total gross assets at the time of a merger or consolidation would have to be increased, for each year since the merger or consolidation, by a percentage equal to 1% plus the adjusted prime rate for the six-month period ending March 31 of that calendar year. An increase could not be compounded.

The adjustment described above would have to continue until the date the adjusted value first was 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 was determined.

The amount of any liability insurance coverage included in the total gross assets could not be included in the adjustment.

# Application of Chapter 30

A Michigan court would have to apply this State's substantive law, including the liability limitation under the bill, in an action that included successor asbestos-related liability.

Chapter 30 would apply to an action that included an asbestos claim to which either of the following applied:

- -- The action was filed on or after the bill's effective date.
- -- The action was pending but trial of the action had not yet commenced as of the bill's effective date.

Proposed MCL 600.3001-600.3007

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.