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Bill Analysis
Legislative Service Commission

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(As Reported by H. Civil and Commercial Law)

Sens. Amstutz, Nein, Randy Gardner, Carey, Jacobson, Spada, Blessing, Stivers, Austria, Harris, Mumper

BILL SUMMARY

- Modifies the "performance of an operation" and the "delivery of a baby" exceptions to the civil immunity provided to volunteer health care professionals, volunteer health care workers, and nonprofit health care referral organizations and to health care facilities or locations associated with such volunteers or organizations in relation to medical, dental, or health care related services provided by volunteers to indigent and uninsured persons.
- Requires the Dental Board to issue a volunteer's certificate to retired dental practitioners upon submission of the application and all required attachments.
- Specifies the types of nurses in specialty practice who may refer to themselves as advanced practice nurses and who may use the initials A.P.N. and provides that in this capacity those nurses are subject to existing law, unchanged by the bill, that specify their scopes of practice.
- Generally limits the successor asbestos-related liabilities of certain corporations to the fair market value of the acquired stock or assets of the transferor if the corporation is a successor in a stock or asset purchase, or to the fair market value of the transferor's total gross assets if the corporation is a successor in a merger or consolidation.
- Provides methods by which a corporation may establish the fair market value of assets, stock, or total gross assets under the provisions covered

* *This analysis was prepared before the report of the House Civil and Commercial Law Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

by the preceding dot point and the formula for the annual increase of that fair market value.

- Provides that the bill's limitations on successor asbestos-related liabilities apply to all asbestos claims and all litigation involving asbestos claims, including claims and litigation pending on the bill's effective date, and that those limitations do not apply to workers' compensation benefits, claims against a successor that do not constitute claims for a successor asbestos-related liability, any obligation arising under the federal "National Labor Relations Act" or under any collective bargaining agreement, or any contractual rights to indemnification.
- Requires courts in Ohio to apply, to the fullest extent permissible under the United States Constitution, Ohio's substantive law, including the bill's provisions, to the issue of successor asbestos-related liabilities.
- Provides that for any cause of action that arises before the act's effective date, the provisions described in the preceding four dot points apply unless a court finds that a party's substantive right has been altered and the alteration is otherwise in violation of the Ohio Constitution's Retroactivity Clause.

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CONTENT AND OPERATION

Civil immunity for volunteer health care professionals, volunteer health care workers, health care facilities or locations, and nonprofit health care referral organizations

General civil immunity under continuing law

Generally, a "health care professional" who is a "volunteer" (see **COMMENT 1**) and who complies with the requirements listed below is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the volunteer in the provision to an "indigent and uninsured person" (see **COMMENT 1**) of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct. The covered diagnosis, care, or treatment includes the health care professional providing samples of medicine and other medical products to the indigent and uninsured person. (R.C. 2305.234(B)(1).)

In order for the health care professional to qualify for the immunity described above, the professional must do all of the following prior to providing diagnosis, care, or treatment (R.C. 2305.234(B)(2)): (1) determine, in good faith, that the indigent and uninsured person is mentally capable of giving informed consent to the provision of the diagnosis, care, or treatment and is not subject to duress or under undue influence, (2) inform the person of the provisions of R.C. 2305.234, including notifying the person that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot hold the health care professional liable for damages in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, unless the action or omission of the health care professional constitutes willful or wanton misconduct, and (3) obtain the informed consent of the person and a written waiver, signed by the person or by another individual on behalf of and in the presence of the person, that states that the person is mentally competent to give informed consent and, without being subject to duress or under undue influence, gives informed consent to the provision of the diagnosis, care, or treatment subject

to the provisions of R.C. 2305.234. The written waiver must state clearly and in conspicuous type that the person or other individual who signs the waiver is signing it with full knowledge that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot bring a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, against the health care professional unless the action or omission of the health care professional constitutes willful or wanton misconduct).

Generally, "health care workers" (see **COMMENT 1**) who are volunteers are not liable in damages to any person or government entity in a tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care worker in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct. (R.C. 2305.234(C).) Subject to certain exceptions and qualifications, a "nonprofit health care referral organization" (see **COMMENT 1**) is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the nonprofit health care referral organization in referring indigent and uninsured persons to, or arranging for the provision of, medical, dental, or other health-related diagnosis, care, or treatment by a volunteer health care professional or a volunteer health care worker covered by the immunity, unless the action or omission constitutes willful or wanton misconduct. (R.C. 2305.234(D).)

A health care facility or location associated with a health care professional, a health care worker, or a nonprofit health care referral organization described in the immunity provisions summarized above generally is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care professional or worker or nonprofit health care referral organization relative to the medical, dental, or other health-related diagnosis, care, or treatment provided to an indigent and uninsured person on behalf of or at the health care facility or location, unless the action or omission constitutes willful or wanton misconduct. (R.C. 2305.234(E).)

Exceptions to the civil immunity

Existing law. Generally, the above-described immunities are not available to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location if, at the time of an alleged injury,

death, or loss to person or property, the health care professionals or health care workers involved are providing one of the following (R.C. 2305.234(F)(1)):

(1) Any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order entered by a court under R.C. 2951.02(B) as a condition of probation or other suspension of a term of imprisonment or imposed by a court as a community control sanction pursuant to R.C. 2929.15 and 2929.17;

(2) Performance of an "operation";¹

(3) Delivery of a baby.

The above-described exceptions do not apply to an individual who provides, or a nonprofit shelter or health care facility at which the individual provides, diagnosis, care, or treatment that is necessary to preserve the life of a person in a medical emergency (R.C. 2305.234(F)(2)).

Operation of the bill. The bill modifies the exceptions to the civil immunities described in (2) and (3) above by providing that, under those exceptions, the immunities are not available to a health care professional, health care worker, nonprofit health care referral organization, or health care facility or location, if, at the time of an alleged injury, death, or loss to person or property, the health care professionals or workers involved are providing delivery of a baby *or any other purposeful termination of a human pregnancy* (R.C. 2305.234(F)(1)(c)) or are providing the performance of an operation to which any one of the following applies (R.C. 2305.234(F)(1)(b)):

(1) The operation requires the administration of "deep sedation" or "general anesthesia" (see "**Definitions**," below).

(2) The operation is a procedure that is not typically performed in an office.

¹ "Operation" means any procedure that involves cutting or otherwise infiltrating human tissue by mechanical means, including surgery, laser surgery, ionizing radiation, therapeutic ultrasound, or the removal of intraocular foreign bodies. "Operation" does not include: (a) the administration of medication by injection, unless the injection is administered in conjunction with a procedure infiltrating human tissue by mechanical means other than the administration of medicine by injection, or (b) routine dental restorative procedures, the scaling of teeth, or extractions of teeth that are not impacted. (R.C. 2305.234(A)(9); but the definition is not changed by the bill.)

(3) The individual involved is a health care professional, and the operation is beyond the scope of practice or the education, training, and competence, as applicable, of the health care professional.

Definitions

The bill includes definitions for the following terms (R.C. 2305.234(A)(13) and (14)):

(1) "Deep sedation" means a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation, a patient's ability to independently maintain ventilatory function may be impaired, a patient may require assistance in maintaining a patent airway and spontaneous ventilation may be inadequate, and cardiovascular function is usually maintained.

(2) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation, the ability to independently maintain ventilatory function is often impaired, a patient often requires assistance in maintaining a patent airway, positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function, and cardiovascular function may be impaired.

Volunteer's certificates for retired dentists

Existing law

Current law provides for the issuance of "volunteer's certificates" to retired dentists so that they may provide their services to indigent and uninsured persons. The State Dental Board *may* issue, without examination, a volunteer's certificate to a person who is retired from practice so that the person may provide dental services to indigent and uninsured persons. An application for a volunteer's certificate must include all of the following:

(1) A copy of the applicant's degree from dental college or dental hygiene school;

(2) One of the following, as applicable: (a) a copy of the applicant's most recent license to practice dentistry or dental hygiene issued by a jurisdiction in the United States that licenses persons to practice dentistry or dental hygiene, or (b) a copy of the applicant's most recent license equivalent to a license to practice dentistry or dental hygiene in one or more branches of the United States Armed Services that the United States government issued.

(3) Evidence of one of the following, as applicable: (a) the applicant has maintained for at least ten years prior to retirement full licensure in good standing in any jurisdiction in the United States that licenses persons to practice dentistry or dental hygiene, or (b) the applicant has practiced as a dentist or dental hygienist in good standing for at least ten years prior to retirement in one or more branches of the United States Armed Services.

(4) *A notarized statement from the applicant, on a form prescribed by the Board, that the applicant will not accept any form of remuneration for any dental services rendered while in possession of a volunteer's certificate.*

The holder of a volunteer's certificate is prohibited from accepting any form of remuneration for providing dental services while in possession of the volunteer's certificate. The holder is subject to the immunity provisions as they apply to health care professionals as described above. (R.C. 4715.32(B), (C), (D), and (E)(4).)

Operation of the bill

The bill provides that within 30 days after receiving an application for a volunteer's certificate that includes all of the items that must be provided with the application, the State Dental Board *must* (instead of *may*) issue, without examination, a volunteer's certificate to a person who is retired from practice so that the person may provide dental services to indigent and uninsured persons. An application for a volunteer's certificate must include all of the items described in paragraphs (1), (2), and (3) under "**Existing law**," above. The bill removes the requirement that an application include a notarized statement from the applicant, on a form prescribed by the Board, that the applicant will not accept any form of remuneration for any dental services rendered while in possession of a volunteer's certificate. (R.C. 4715.42(B) and (C).)

The bill further provides that within 90 days after the effective date of this provision, the State Dental Board must make available through its website the application form for a volunteer's certificate, a description of the application process, and a list of all the items required to be submitted with the application as described in paragraphs (1), (2), and (3) under "**Existing law**," above (R.C. 4715.42(G)).

Advanced practice nurses

Background

Former R.C. 4723.52 to 4723.60 set forth pilot programs to provide access to health care in underserved areas through the use of advanced practice nurses.

The advisory committee of each pilot program was required to develop a standard care arrangement to establish conditions under which an advanced practice nurse was required to refer a patient to a physician and procedures for quality assurance review of advanced practice nurses by the advisory committee. For purposes of the pilot programs, the Board of Nursing could approve certain registered nurses who met specific criteria as advanced practice nurses.² The Board also could approve an advanced practice nurse to prescribe drugs and therapeutic devices subject to specified requirements. (R.C. 4723.52, 4723.55, and 4723.56--not in the bill.) Effective January 17, 2004, R.C. 4723.52 to 4723.60 were repealed as provided in Section 3 of Am. Sub. H.B. 241 of the 123rd General Assembly.

R.C. 4723.41 to 4723.50 authorize the Board of Nursing to issue certificates of authority for registered nurses to practice nursing as certified registered nurse anesthetists, clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners (generally referred to in this part of the analysis as "nurses in specialty practice"). R.C. 4723.48 requires the Board of Nursing to issue certificates to prescribe drugs and therapeutic devices to clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners who meet certain specified requirements.

Overview of the bill

In view of the repeal of the pilot programs dealing with advanced practice nurses, the bill specifies the nurses who may refer to themselves as advanced practice nurses. It generally makes the following changes in permanent law: (1) it redefines "advanced practice nurse" in the Nurses Law to mean any of specified nurses in specialty practice, (2) it authorizes those covered nurses to use the title "advanced practice nurse" or the initials "A.P.N.," and (3) it makes conforming changes in laws that refer to advanced practice nurses and other laws.

Nurses Law

The existing Nurses Law defines "advanced practice nurse" as, until three years and eight months after May 17, 2000, a registered nurse who is approved by the Board of Nursing under R.C. 4723.55 to practice as an advanced practice nurse (R.C. 4723.01(O)).

² *In addition to other criteria, the applicant had to be either: (1) a nurse-midwife who held a current, valid certificate issued under R.C. 4723.42 and was certified by the American College of Nurse-Midwives or (2) a registered nurse certified as a clinical nurse specialist or nurse practitioner by a national certifying organization recognized by the Board (R.C. 4723.55(B)).*

The bill modifies the definition of "advanced practice nurse" to mean *a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner* (see **COMMENT 2**). It specifically authorizes any of the above nurses in specialty practice to use the title "advanced practice nurse" or the initials "A.P.N." (R.C. 4723.01(O) and 4723.03(C)(7).)

Under the existing Nurses Law, a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may provide to individuals and groups nursing care that requires knowledge and skill obtained from advanced formal education and clinical experience. The bill expands this provision by stating that in this capacity as an advanced practice nurse, a certified nurse-midwife is subject to R.C. 4723.43(A), a certified registered nurse anesthetist is subject to R.C. 4723.43(B), a certified nurse practitioner is subject to R.C. 4723.42(C), and a clinical nurse specialist is subject to R.C. 4723.43(D), all division references dealing with their respective scopes of practice. (R.C. 4723.43, first par.) (See **COMMENT 2**.)

The bill prohibits any person from doing either of the following unless the person holds a current, valid certificate of authority to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner issued by the Board of Nursing under the Nurses Law: (1) represent the person as being an advanced practice nurse or (2) use any title or initials implying that the person is an advanced practice nurse (R.C. 4723.44(A)(4) and (5)). The bill also prohibits any of those types of nurses in specialty practice from using the title "advanced practice nurse" or "A.P.N." or any other title or initials implying that the nurse is authorized to practice any specialty other than the specialty designated in the current, valid certificate of authority (R.C. 4723.44(C)(3)).

Other changes

The bill revises the definition of "advanced practice nurse" in R.C. 2305.113(E)(16) (actions upon a medical, dental, optometric, or chiropractic claim) to mean any of the nurses in specialty practice who holds a certificate of authority issued by the Board of Nursing under the Nurses Law. It modifies the definition of "standard care arrangement" in the Nurses Law as (the bill eliminates ", except as it pertains to an advanced practice nurse,") a written, formal guide for planning and evaluating a patient's health care that is developed by one or more collaborating physicians or podiatrists and a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner and meets the requirements of R.C. 4723.431 (R.C. 4723.01(N)).

The bill removes the references to "advanced practice nurse" from existing provisions that specify any of the types of nurses in specialty practice that are

included in the bill's definition of "advanced practice nurse." (R.C. 3719.81(B)(2) (furnishing drug samples), 4713.02(A)(7) (composition of State Board of Cosmetology), 4723.28(B)(24) (grounds for disciplinary actions taken by the Board of Nursing regarding licensees or certificate holders), and 4729.01(I)(2) (definition of "licensed health professional authorized to prescribe drugs" or "prescriber" in the Pharmacists and Dangerous Drug Laws).) The bill eliminates the provision in R.C. 4731.22(B)(30), which currently requires the State Medical Board to impose certain sanctions for the failure of a collaborating physician to fulfill the responsibilities agreed to by the physician and an advanced practice nurse participating in a pilot program under R.C. 4723.52.

In existing laws referring to an advanced practice nurse approved under R.C. 4723.56 to prescribe drugs and therapeutic devices, the bill substitutes the term "applicant" or "recipient" for "advanced practice nurse" in R.C. 4723.48(B) (application for a certificate to prescribe drugs or therapeutic devices) and substitutes "person" for "advanced practice nurse" in R.C. 4723.482(A)(1) (contents of application for a certificate to prescribe drugs or therapeutic devices).

Uncodified law

The bill provides in uncodified law that this act's amendment of 4713.02(A)(7) (see second preceding paragraph, above) does not affect the term of office of any person serving as a member of the State Board of Cosmetology on the effective date of the act. It also provides that the act's amendment of R.C. 4723.28(B)(24) (see second preceding paragraph, above) does not remove the authority of the Board of Nursing to conduct investigations and take disciplinary actions regarding a person who engaged in the activities specified in that provision while participating in one of the advanced practice nurse pilot programs operated pursuant to R.C. 4723.52 to 4723.60 prior to the January 17, 2004, effective date of the repeal of those sections, as provided in Section 3 of Am. Sub. H.B. 241 of the 123rd General Assembly. The bill further provides that the act's amendment of R.C. 4731.22(B)(30) (see second preceding paragraph, above) does not remove the State Medical Board's authority to conduct investigations and take disciplinary actions regarding the failure of a collaborating physician to fulfill the responsibilities agreed to by the physician and an advanced practice nurse participating in one of the pilot programs operated pursuant to R.C. 4723.52 to 4723.60 prior to the January 17, 2004, effective date of the repeal of those sections. (Sections 6, 7, and 8.)

Successor asbestos-related liabilities

The bill enacts certain limitations on the successor asbestos-related liabilities of certain corporations.

Definitions for successor asbestos-related liability provisions

The bill provides the following definitions for the purposes of the successor asbestos-related liabilities provisions (R.C. 2307.97(A)):

(1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

(2) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes any of the following: (a) a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos, or (b) a claim for damage or loss to property that is caused by the installation, presence, or removal of asbestos.

(3) "Corporation" means a corporation for profit, including: (a) a domestic corporation organized under the laws of Ohio or (b) a foreign corporation organized under laws other than the laws of Ohio that has had a certificate of authority to transact business in Ohio or has done business in Ohio.

(4) "Successor" means a corporation or a subsidiary of a corporation that assumes or incurs, or had assumed or incurred, successor asbestos-related liabilities or had successor asbestos-related liabilities imposed on it by court order.

(5) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, if the liabilities are related in any way to asbestos claims and either: (a) the liabilities are assumed or incurred by a successor as a result of or in connection with an asset purchase, stock purchase, merger, consolidation, or agreement providing for an asset purchase, stock purchase, merger, or consolidation, including a plan of merger, or (b) the liabilities were imposed by court order on a successor.

"Successor asbestos-related liabilities" includes any liabilities described in the prior paragraph that, after the effective date of the asset purchase, stock purchase, merger, or consolidation, are paid, otherwise discharged, committed to be paid, or committed to be otherwise discharged by or on behalf of the successor, or by or on behalf of a transferor, in connection with any judgment, settlement, or other discharge of those liabilities in Ohio or another jurisdiction.

(6) "Transferor" means a corporation or its shareholders from which successor asbestos-related liabilities are or were assumed or incurred by a successor or were imposed by court order on a successor.

Applicability of limitations to a corporation. The bill provides that the limitations described below in **Limitations on liability** apply to a corporation that is either of the following (R.C. 2307.97(B)):

(1) A successor that became a successor prior to July 30, 1977, if either (a) in the case of a successor in a stock purchase or an asset purchase, the successor paid less than \$15 million for the stock or assets of the transferor or (b) in the case of a successor in a merger or consolidation, the fair market value of the total gross assets of the transferor, at the time of the merger or consolidation, excluding any insurance of the transferor, was less than \$50 million;

(2) Any successor to a prior successor if the prior successor met the requirements of (1)(a) or (b), above, whichever is applicable.

Limitations on liability

The bill provides that, except as described in the following paragraph, the cumulative successor asbestos-related liabilities of a corporation are limited to either of the following: (1) in the case of a corporation that is a successor in a stock purchase or an asset purchase, the fair market value of the acquired stock or assets of the transferor, as determined on the effective date of the stock or asset purchase, or (2) in the case of a corporation that is a successor in a merger or consolidation, the fair market value of the total gross assets of the transferor, as determined on the effective date of the merger or consolidation.

If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior purchase of assets or stock involving a prior transferor, the fair market value of the assets or stock purchased from the prior transferor, determined as of the effective date of the prior purchase of the assets or stock, is substituted for the limitation described in clause (1) in the prior paragraph for the purpose of determining the limitation of the liability of a corporation. If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a merger or consolidation involving a prior transferor, the fair market value of the total gross assets of the prior transferor, determined as of the effective date of the prior merger or consolidation, is substituted for the limitation described in clause (2) in the prior paragraph for the purpose of determining the limitation of the liability of a corporation.

A corporation described in either of the two preceding paragraphs has no responsibility for any successor asbestos-related liabilities in excess of the

limitation of those liabilities described in the applicable provision. (R.C. 2307.97(C).)

Establishment of fair market value of assets, stock, or total gross assets

Under the bill, a corporation may establish the fair market value of assets, stock, or total gross assets under the provisions described in "**Limitations on liability**," above, by means of any method that is reasonable under the circumstances, including by reference to their going-concern value, to the purchase price attributable to or paid for them in an arm's length transaction, or, in the absence of other readily available information from which fair market value can be determined, to their value recorded on a balance sheet. Assets and total gross assets include intangible assets. A showing by the successor of a reasonable determination of the fair market value of assets, stock, or total gross assets is prima-facie evidence of their fair market value.

For purposes of establishing the fair market value of total gross assets under the preceding paragraph, the total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor the assets of which are being valued for purposes of the limitations on liability, if the insurance has been collected or is collectable to cover the successor asbestos-related liabilities involved. Those successor asbestos-related liabilities do not include any compensation for any liabilities arising from the exposure of workers to asbestos solely during the course of their employment by the transferor. Any settlement of a dispute concerning the insurance coverage described in this provision that is entered into by a transferor or successor with the insurer of the transferor before the provision's effective date is determinative of the aggregate coverage of the liability insurance that is included in the determination of the transferor's total gross assets.

After a successor has established a reasonable determination of the fair market value of assets, stock, or total gross assets under the provisions described above, a claimant that disputes that determination of the fair market value has the burden of establishing a different fair market value. (R.C. 2307.97(D)(1), (2), and (3).)

Adjustment of fair market value

Under the bill, subject to the provisions described in the following paragraph, the fair market value of assets, stock, or total gross assets at the time of the asset purchase, stock purchase, merger, or consolidation increases annually, at a rate equal to the sum of: (1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the effective date of the asset purchase, stock purchase, merger, or consolidation, or, if the prime rate is not

published in that edition of the Wall Street Journal, the prime rate as reasonably determined on the first business day of the year, and (2) 1%.

The rate that is so determined must not be compounded. The adjustment of the fair market value of assets, stock, or total gross assets continues in the manner described in the preceding paragraph until the adjusted fair market value is first exceeded by the cumulative amounts of successor asbestos-related liabilities that are paid or committed to be paid by or on behalf of a successor or prior transferor, or by or on behalf of a transferor, after the time of the asset purchase, stock purchase, merger, or consolidation for which the fair market value of assets, stock, or total gross assets is determined. No adjustment of the fair market value of total gross assets may be applied to any liability insurance that is otherwise included in total gross assets as described in "Establishment of fair market value . . .," above. (R.C. 2307.97(D)(4).)

Application of the limitations on liability

The bill provides that the limitations described above in "Limitations on liability" apply to: (1) all asbestos claims, including asbestos claims that are pending on the bill's effective date, and all litigation involving asbestos claims, including litigation that is pending on the bill's effective date, and (2) successors of a corporation to which the bill's provisions apply (R.C. 2307.97(E)(1)).

It provides that the limitations on liability do not apply to any of the following (R.C. 2307.97(E)(2)):

(1) Workers' compensation benefits paid by or on behalf of an employer to an employee pursuant to any provision of the Ohio workers' compensation law (R.C. Chapter 4121., 4123., 4127., or 4131.) or comparable workers' compensation law of another jurisdiction;

(2) Any claim against a successor that does not constitute a claim for a successor asbestos-related liability;

(3) Any obligation arising under the "National Labor Relations Act" or under any collective bargaining agreement;

(4) Any contractual rights to indemnification.

The bill requires the courts in Ohio to apply, to the fullest extent permissible under the Constitution of the United States, Ohio's substantive law, including the provisions of the bill, to the issue of successor asbestos-related liabilities (R.C. 2307.97(F)).

Disposition of assets

The bill provides that the terms and conditions of the following transactions under an existing provision of the General Corporation Law are subject to the limitations on liability discussed in "**Limitations on liability**," above: a lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business that is authorized (1) by the directors, either before or after authorization by the shareholders or (2) at a meeting of the shareholders held for that purpose, by the affirmative vote of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on the proposal, or, if the articles so provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a majority, of the voting power, and by the affirmative vote of the holders of shares of any particular class that is required by the articles (R.C. 1701.76(F)).

Merger or consolidation

The bill provides that, under an existing provision of the General Corporation Law with regards to when a merger or consolidation becomes effective, all obligations belonging to or due to each constituent entity, the liability of the surviving or new entity for all the obligations of each constituent entity, and all the rights of creditors of each constituent entity that are preserved unimpaired are subject to the above-discussed limitations under the successor asbestos-related liability provisions of the bill (R.C. 1701.82(A)(3), (4), and (5)).

Uncodified law

The bill provides that for any cause of action that arises before the effective date of this act, the provisions set forth in sections 1701.76, 1701.82, and 2307.97 of the Revised Code, as amended or enacted in Sections 1 and 2 of this act, are to be applied unless the court that has jurisdiction over the case finds both of the following:

- (1) That a substantive right of a party to the case has been altered;
- (2) That the alteration is otherwise in violation of Section 28 of Article II, Ohio Constitution.

COMMENT

1. The following terms used in the bill are defined in R.C. 2305.234(A) under existing law, unchanged by the bill:

"Health care professional" means any of the following who provide medical, dental, or other health-related diagnosis, care, or treatment: (a) physicians authorized under R.C. Chapter 4731. to practice medicine and surgery or osteopathic medicine and surgery, (b) registered nurses and licensed practical nurses licensed under R.C. Chapter 4723. and individuals who hold a certificate of authority issued under R.C. Chapter 4723. that authorizes the practice of nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, (c) physician assistants authorized to practice under R.C. Chapter 4730., (d) dentists and dental hygienists licensed under R.C. Chapter 4715., (e) physical therapists, physical therapist assistants, occupational therapists, and occupational therapy assistants licensed under R.C. Chapter 4755., (f) chiropractors licensed under R.C. Chapter 4734., (g) optometrists licensed under R.C. Chapter 4725., (h) podiatrists authorized to practice under R.C. Chapter 4731., (i) dietitians licensed under R.C. Chapter 4759., (j) pharmacists licensed under R.C. Chapter 4729., (k) emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic, certified under R.C. Chapter 4765., or (l) respiratory care professionals licensed under R.C. Chapter 4761., and (m) speech-language pathologists and audiologists licensed under R.C. Chapter 4753.

"Health care worker" means a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to direct that individual's activities, including medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.

"Volunteer" means an individual who provides any medical, dental, or other health-care related diagnosis, care, or treatment without the expectation of receiving and without receipt of any compensation or other form of remuneration from an indigent and uninsured person, another person on behalf of an indigent and uninsured person, any shelter or health care facility, or any other person or governmental entity.

2. "Certified registered nurse anesthetist," "clinical nurse specialist," "certified nurse-midwife," and "certified nurse practitioner" means a registered nurse who holds a valid certificate of authority issued under the Nurses Law that authorizes the practice of nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, respectively, in accordance with R.C. 4723.43 and rules adopted by the Board of Nursing (R.C. 4723.01(G), (H), (I), and (J)).

R.C. 4723.43 provides as follows:

A certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may provide to individuals and groups nursing care that requires knowledge and skill obtained from advanced formal education and clinical experience.

(A) A nurse authorized to practice as a certified nurse-midwife, in collaboration with one or more physicians, may provide the management of preventive services and those primary care services necessary to provide health care to women antepartally, intrapartally, postpartally, and gynecologically, consistent with the nurse's education and certification, and in accordance with rules adopted by the board.

No certified nurse-midwife may perform version, deliver breech or face presentation, use forceps, do any obstetric operation, or treat any other abnormal condition, except in emergencies. Division (A) of this section does not prohibit a certified nurse-midwife from performing episiotomies or normal vaginal deliveries, or repairing vaginal tears. A certified nurse-midwife who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may, in collaboration with one or more physicians, prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code.

(B) A nurse authorized to practice as a certified registered nurse anesthetist, with the supervision and in the immediate presence of a physician, podiatrist, or dentist, may administer anesthesia and perform anesthesia induction, maintenance, and emergence, and may perform with supervision preanesthetic preparation and evaluation, postanesthesia care, and clinical support functions, consistent with the nurse's education and certification, and in accordance with rules adopted by the board. A certified registered nurse anesthetist is not required to obtain a certificate to prescribe in order to provide the anesthesia care described in this division.

The physician, podiatrist, or dentist supervising a certified registered nurse anesthetist must be actively engaged in practice in this state. When a certified registered nurse anesthetist is supervised by a podiatrist, the nurse's scope of practice is limited to the anesthesia procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform. A certified registered nurse anesthetist may not administer general anesthesia under the supervision of a podiatrist in a podiatrist's office. When a certified registered nurse anesthetist is supervised by a dentist, the nurse's scope of practice is limited to the anesthesia procedures that the dentist has the authority under Chapter 4715. of the Revised Code to perform.

(C) A nurse authorized to practice as a certified nurse practitioner, in collaboration with one or more physicians or podiatrists, may provide preventive and primary care services and evaluate and promote patient wellness within the nurse's nursing specialty, consistent with the nurse's education and certification, and in accordance with rules adopted by the board. A certified nurse practitioner who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may, in collaboration with one or more physicians or podiatrists, prescribe drugs and therapeutic devices in accordance with 4723.481.

When a certified nurse practitioner is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform.

(D) A nurse authorized to practice as a clinical nurse specialist, in collaboration with one or more physicians or podiatrists, may provide and manage the care of individuals and groups with complex health problems and provide health care services that promote, improve, and manage health care within the nurse's nursing specialty, consistent with the nurse's education and in accordance with rules adopted by the

board. A clinical nurse specialist who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may, in collaboration with one or more physicians or podiatrists, prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code.

When a clinical nurse specialist is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-02-03	p. 1008
Reported, S. Civil Justice	04-01-04	pp. 1701-1702
Passed Senate (32-1)	04-20-04	pp. 1738-1739
Reported, H. Civil & Commercial Law	---	---

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