A BILL TO BE ENTITLED
AN ACT TO CREATE TRANSPARENCY IN CONTRACTS BETWEEN THE ATTORNEY GENERAL AND PRIVATE ATTORNEYS, TO AMEND THE LAWS GOVERNING PRODUCTS LIABILITY ACTIONS, TO PREVENT THE ABUSE OF PATENTS, TO ALLOW FOR SHAREHOLDER ASSENT TO EXCLUSIVE FORUM, TO CREATE A THREE-JUDGE PANEL TO RULE ON CLAIMS THAT AN ACT OF THE GENERAL ASSEMBLY IS FACIALLY INVALID BASED UPON THE NORTH CAROLINA OR UNITED STATES CONSTITUTIONS, AND TO LIMIT ASBESTOS-RELATED LIABILITIES FOR CERTAIN SUCCESSOR CORPORATIONS.

The General Assembly of North Carolina enacts:

PART I. CREATE TRANSPARENCY IN CONTRACTS BETWEEN THE ATTORNEY GENERAL AND PRIVATE ATTORNEYS

SECTION 1.1. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 2A. 
"Transparency in Third-Party Contracting by Attorney General."

"§ 114-9.2. Title. This Article shall be known and may be cited as the "Transparency in Private Attorney Contracts Act (TIPAC).""

"§ 114-9.3. Definitions. The following definitions apply in this Article:

(1) Contingency fee contract. – A contract entered into by a State agency to retain private counsel that contains a contingency fee arrangement, including, but not limited to, pure contingency fee agreements and hybrid agreements, including a contingency fee aspect.

(2) Government attorney. – An attorney employed by the State as a staff attorney in a State agency.

(3) Private attorney. – An attorney in private practice or employed by a private law firm.

(4) State. – The State of North Carolina, including State officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of State government and any of its agents.
§ 114-9.4. Procurement.

(a) A State agency may not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into the contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

1. Whether there exists sufficient and appropriate legal and financial resources within the Attorney General’s office to handle the matter.
2. The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly.
3. The geographic area where the attorney services are to be provided.
4. The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney’s experience with similar issues or cases.

(b) If the Attorney General makes the determination described in subsection (a) of this section, the Attorney General shall request proposals from private attorneys to represent the State agency on a contingency fee basis and draft a written request for proposals from private attorneys, unless the Attorney General determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in writing. A request for proposals under this provision is not subject to Article 3 of Chapter 143 of the General Statutes. Until the conclusion of the legal proceeding or other matter for which the services of the private attorney were sought, all proposals received shall be maintained by the Attorney General and shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes. All proposals maintained under this subsection shall be made available to the State Auditor for oversight purposes, upon request.

(c) A private attorney who submits a proposal under this section shall simultaneously pay a fee in the amount of fifty dollars ($50.00). All fees collected under this subsection shall be used for the maintenance of the Attorney General’s Web site.

§ 114-9.5. Contingency Fees.

(a) The Attorney General may give permission under G.S. 114-2.3 for a State agency to enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee, exclusive of reasonable costs and expenses, in excess of:

1. Twenty-five percent (25%) of any damages up to ten million dollars ($10,000,000); plus
2. Twenty percent (20%) of any portion of such damages between ten million dollars ($10,000,000) and fifteen million dollars ($15,000,000); plus
3. Fifteen percent (15%) of any portion of such damages between fifteen million dollars ($15,000,000) and twenty million dollars ($20,000,000); plus
4. Ten percent (10%) of any portion of such damages between twenty million dollars ($20,000,000) and twenty-five million dollars ($25,000,000); plus
5. Five percent (5%) of any portion of such damages exceeding twenty-five million dollars ($25,000,000).

(b) In no event shall the aggregate contingency fee exceed fifty million dollars ($50,000,000), exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(c) A contingency fee shall not be based on penalties or civil fines awarded or any amounts attributable to penalties or civil fines.

(a) Decisions regarding disposition of the case are reserved exclusively to the discretion of the State agency in consultation with a government attorney.

(b) The Attorney General shall develop a standard addendum to every contract for contingency fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the State agency, including, without limitation, the requirements listed in subsection (a) of this section.

§ 114-9.7. Oversight.

(a) Until the conclusion of the legal proceeding or other matter for which the services of the private attorney have been retained, the executed contingency fee contract and the Attorney General’s written determination pursuant to G.S. 114-9.4 shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes. All records maintained under this subsection shall be made available to the State Auditor for oversight purposes, upon request.

(b) The amount of any payment of contingency fees pursuant to a contingency fee contract subject to this Article shall be posted on the Attorney General’s Web site within 15 days after the payment of those contingency fees to the private attorney and shall remain posted on the Web site for at least 365 days thereafter.

(c) Any private attorney under contract to provide services to a State agency on a contingency fee basis shall, from the inception of the contract until at least four years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of those attorney services. In addition, the private attorney shall maintain detailed contemporaneous time records for all attorneys and paralegals working on the matter in increments of no greater than one-tenth of an hour and shall promptly provide these records to the Attorney General, upon request. All records maintained under this subsection shall be made available to the State Auditor for oversight purposes, upon request.

(d) By February 1 of each year, the Attorney General shall submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year. To the fullest extent possible without waiving the evidentiary privileges of the State in any pending matters, the report shall:

(1) Identify each new contingency fee contract entered into during the year and each previously executed contingency fee contract that remains current during any part of the year.

(2) Include the name of the private attorney with whom the department has contracted in each instance, including the name of the attorney’s law firm.

(3) Describe the nature and status of the legal matter that is the subject of each contract.

(4) Provide the name of the parties to each legal matter.

(5) Disclose the amount of recovery.

(6) Disclose the amount of any contingency fee paid.

(7) Include copies of any written determinations made under G.S. 114-9.4.


Nothing in this Article shall be construed to expand the authority of any State agency or officer or employee of this State to enter into contracts for legal representation where no authority previously existed."

SECTION 1.2. G.S. 114-2.3 reads as rewritten:

§ 114-2.3. Use of private counsel limited.

(a) Every agency, institution, department, bureau, board, or commission of the State, authorized by law to retain private counsel, shall obtain written permission from the Attorney General prior to employing private counsel. This section does not apply to counties, cities,
towns, other municipal corporations or political subdivisions of the State, or any agencies of
these municipal corporations or political subdivisions, or to county or city boards of education.

(b) Article 2A of this Chapter applies to any contract to retain private counsel
authorized by the Attorney General under this section."

SECTION 1.3. Sections 1.1 and 1.2 of this act are effective when they become law
and apply to any contract to retain private counsel authorized by the Attorney General entered
into on or after that date.

PART III. AMEND THE LAWS GOVERNING PRODUCTS LIABILITY ACTIONS

SECTION 3.1. Chapter 99B of the General Statutes is amended by adding a new
section to read:


(a) Except as provided in subsection (b) of this section, in any product liability action
against a manufacturer of a drug, if the drug that is alleged to have caused the harm was
approved for safety and efficacy by the United States Food and Drug Administration, and the
drug and its labeling were in compliance with the United States Food and Drug
Administration's approval at the time the drug left the control of the manufacturer, there is a
rebutable presumption that the manufacturer did not fail to provide an adequate warning. This
presumption may be rebutted by a preponderance of the evidence.

(b) This section does not apply if the claimant proves that the manufacturer, at any time
before the event that allegedly caused the harm, did any of the following:

(1) Sold the drug in the United States after the effective date of an order of the
United States Food and Drug Administration to remove the drug from the
market, to withdraw its approval, or to substantially alter the terms of
approval in a manner that would have avoided the claimant's alleged injury.

(2) Intentionally, and in violation of applicable regulations as determined by
final agency action, withheld from or misrepresented to the United States
Food and Drug Administration information material to the approval or
maintaining of approval of the drug, and such information is relevant to the
harm which the claimant allegedly suffered.

(3) Made an illegal payment to an official or employee of a government agency
for the purpose of securing or maintaining approval of the drug."

SECTION 3.2. This section applies only to product liability claims alleging that a
drug manufacturer failed to provide an adequate warning.

SECTION 3.3. Section 3.1 of this act becomes effective October 1, 2014, and
applies to actions commenced on or after that date.

PART IV. PREVENT THE ABUSE OF PATENTS

SECTION 4.1. Chapter 75 of the General Statutes is amended by adding a new
Article to read:

"Article 8.

§ 75-136. Title.
This Article shall be known and may be cited as the "Abusive Patent Assertions Act."

§ 75-137. Purpose.
(a) The General Assembly finds the following:

(1) North Carolina is home to a growing high-technology, knowledge-based
economy. With its top-tier research universities and active technology
sector, North Carolina is poised to continue its growth. To continue growing,
North Carolina must attract new, small, and mid-sized technology
companies. Doing so will help provide jobs for North Carolina's residents
and boost North Carolina's economy. North Carolina also is home to companies in retail, manufacturing, and other industries, many of whom are customers of technology companies. Those other businesses are more likely to succeed if not inhibited by abusive and bad-faith demands and litigation.

(2) Patents encourage research, development, and innovation. Patent holders have legitimate rights to enforce their patents.

(3) The General Assembly does not wish to interfere with good-faith patent litigation or the good-faith enforcement of patents. The General Assembly also recognizes that North Carolina is preempted from passing any law that conflicts with federal patent law.

(4) Patent litigation can be technical, complex, and expensive. The expense of patent litigation, which may cost millions of dollars, can be a significant burden on companies. North Carolina wishes to help its businesses avoid these costs by encouraging the most efficient resolution of patent infringement claims without conflicting with federal law.

(5) In order for North Carolina companies to be able to respond promptly and efficiently to patent infringement assertions against them, it is necessary that they receive specific information regarding how their product, service, or technology may have infringed the patent at issue. Receiving this information at an early stage will facilitate the resolution of claims and lessen the burden of potential litigation on North Carolina companies.

(6) Abusive patent litigation, and especially the assertion of bad-faith infringement claims, can harm North Carolina companies. A business that receives a letter asserting such claims faces the threat of expensive and protracted litigation and may feel that it has no choice but to settle and to pay a licensing fee even if the claim is meritless. This is especially so for small- and medium-sized companies and nonprofits that lack the resources to investigate and defend themselves against infringement claims.

(7) Not only do bad-faith patent infringement claims impose a significant burden on individual North Carolina businesses, they also undermine North Carolina's efforts to attract and nurture technology and other companies. Funds used to avoid the threat of bad-faith litigation are no longer available to invest, produce new products, expand, or hire new workers, thereby harming North Carolina's economy.

(8) North Carolina has a strong interest in patent matters involving its citizens and its businesses, including protecting its citizens and businesses against abusive patent assertions and ensuring North Carolina companies are not subjected to abusive patent assertion by entities acting in bad faith.

(9) In lawsuits involving abusive patent assertions, an accused infringer prevailing on the merits may be awarded costs and, less frequently, fees. These awards do not serve as a deterrent to abusive patent assertion entities who have limited liability, as these companies may hold no cash or other assets. North Carolina has a strong interest in making sure that prevailing North Carolina companies sued by abusive patent assertions entities can recover what is awarded to them.

(b) The General Assembly seeks, by this narrowly tailored act, to strike a balance between (i) the interests of efficient and prompt resolution of patent infringement claims, protection of North Carolina businesses from abusive and bad-faith assertions of patent infringement, and building of North Carolina's economy and (ii) the intentions to respect federal law and be careful to not interfere with legitimate patent enforcement actions. Except as
specifically set forth in this act regarding bad-faith patent assertions, nothing in this act is
intended to alter current law concerning personal liability of principals in business entities.

"§ 75-138. Definitions.

The following definitions apply in this Article:

(1) Affiliate. – A business establishment, business, or other legal entity that
wholly or substantially owns, is wholly or substantially owned by, or is
under common ownership with another entity.

(2) Demand. – A letter, e-mail, or other communication asserting or claiming
that a target has engaged in patent infringement or should obtain a license to
a patent.


(4) Interested party. – A person, other than the party alleging infringement, that
(i) is an assignee of the patent or patents at issue; (ii) has a right, including a
contingent right, to enforce or sublicense the patent or patents at issue; or
(iii) has a direct financial interest in the patent or patents at issue, including
the right to any part of an award of damages or any part of licensing revenue.
A "direct financial interest" does not include either of the following:
a. An attorney or law firm providing legal representation in the civil
action alleging patent infringement if the sole basis for the financial
interest of the attorney or law firm in the patent or patents at issue
arises from the attorney or law firm’s receipt of compensation
reasonably related to the provision of the legal representation.
b. A person whose sole financial interest in the patent or patents at issue
is ownership of an equity interest in the party alleging infringement,
unless such person also has the right or ability to influence, direct, or
control the civil action.

(5) Operating entity. – A person primarily engaged in, when evaluated with its
affiliates over the preceding 24-month period and when disregarding the
selling and licensing of patents, one or more of the following activities:
a. Research and technical or experimental work to create, test, qualify,
modify, or validate technologies or processes for commercialization
of goods or services;
b. Manufacturing; or
c. The provision of goods or commercial services.

(6) Target. – A North Carolina person that meets one or more of the following:
a. The person has received a demand or is the subject of an assertion or
allegation of patent infringement.
b. The person has been threatened with litigation or is the defendant of
a filed lawsuit alleging patent infringement.
c. The person has customers who have received a demand asserting that
the person’s product, service, or technology has infringed a patent.

"§ 75-139. Abusive patent assertions.

(a) It is unlawful for a person to make a bad-faith assertion of patent infringement. A
court may consider the following factors as evidence that a person has made a bad-faith
assertion of patent infringement:

(1) The demand does not contain all of the following information:
a. The patent application number or patent number.
b. The name and address of the patent owner or owners and assignee or
assignees, if any.
c. Factual allegations concerning the specific areas in which the target’s products, services, and technology infringe the patent or are covered by specific, identified claims in the patent.

d. An explanation of why the person making the assertion has standing, if the United States Patent and Trademark Office’s assignment system does not identify the person asserting the patent as the owner.

(2) Prior to sending the demand, the person failed to conduct an analysis comparing the claims in the patent to the target’s products, services, and technology, or the analysis was done but does not identify specific areas in which the products, services, and technology are covered by the claims in the patent.

(3) The demand lacks the information described in subdivision (1) of this subsection, the target requests the information, and the person fails to provide the information within a reasonable period of time.

(4) The person demands payment of a license fee or response within an unreasonably short period of time.

(5) The person offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license, or the person offers to license the patent for an amount that is based on the cost of defending a potential or actual lawsuit.

(6) The claim or assertion of patent infringement is meritless, and the person knew or should have known that the claim or assertion is meritless; or the claim or assertion relies on an interpretation of the patent that was disclaimed during prosecution, and the person making the claim or assertion knows or should have known about the disclaimer, or would have known about the disclaimer if the person reviewed the patent’s prosecution history.

(7) The claim or assertion of patent infringement is deceptive.

(8) The person or its subsidiaries or affiliates have previously or concurrently filed or threatened to file one or more lawsuits based on the same or similar claim of patent infringement and (i) those threats or lawsuits lacked the information described in subdivision (1) of this subsection, or (ii) the person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless.

(9) The person making the claim or assertion sent the same demand or substantially the same demand to multiple recipients and made assertions against a wide variety of products and systems without reflecting those differences in a reasonable manner in the demands.

(10) The person making the claim or assertion is aware of, but does not disclose, any final, nonfinal, or preliminary postgrant finding of invalidity or unpatentability involving the patent.

(11) The person making the claim or assertion seeks an injunction when that is objectively unreasonable under the law.

(b) A court may consider the following factors as evidence that a person has not made a bad-faith assertion of patent infringement:

(1) The demand contains the information described in subdivision (1) of subsection (a) of this section.

(2) Where the demand lacks the information described in subdivision (1) of subsection (a) of this section and the target requests the information, the person provides the information within a reasonable period of time.
(3) The person engages in a good-faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy.

(4) The person makes a substantial investment in the use of the patent or in the production or sale of a product or item that the person reasonably believes is covered by the patent. "Use of the patent" in the preceding sentence means actual practice of the patent and does not include licensing without actual practice.

(5) The person is either (i) the inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee or (ii) an institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education.

(6) The person has demonstrated good-faith business practices in previous efforts to enforce the patent, or a substantially similar patent, or has successfully enforced the patent, or a substantially similar patent, through litigation.

(7) Any other factor the court finds relevant.

(c) This Article does not apply to any of the following:

(1) A demand letter or assertion of patent infringement arising under any of the following:
   a. 7 U.S.C. § 136 et seq.
   b. 7 U.S.C. § 2321 et seq.
   c. 21 U.S.C. § 301 et seq.
   d. 35 U.S.C. § 161 et seq.
   e. 35 U.S.C. § 271(e)(2).

(2) A demand letter or assertion of patent infringement by or on behalf of (i) an institution of higher education incorporated under the laws of and with its principal offices in North Carolina or (ii) a technology transfer organization owned by or affiliated with the institution of higher education.

(3) A demand letter or assertion of patent infringement by or on behalf of a nonprofit research organization recognized as exempt from federal income tax under 26 U.S.C. § 501(c)(3) incorporated under the laws of and with its principal offices in North Carolina, or a technology transfer organization owned by or affiliated with the organization.

(4) A demand letter or assertion of patent infringement made by an operating entity or its affiliate.

(d) Subject to the provisions of subsections (a) and (b) of this section, and provided the activities are not carried out in bad faith, nothing in this section shall be construed to deem it an unlawful practice for any person who owns or has the right to license or enforce a patent to do any of the following:

(1) Advise others of that ownership or right of license or enforcement.
(2) Communicate to others that the patent is available for license or sale.
(3) Notify another of the infringement of the patent.
(4) Seek compensation on account of past or present infringement or for a license to the patent.

§ 75-140. Bond.

(a) Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a person has made a bad-faith assertion of patent infringement in violation of this Chapter, the court shall require the person to post a bond in an amount equal to a good-faith estimate of the target’s fees and costs to litigate the claim and amounts reasonably
likely to be recovered under G.S. 75-141, conditioned upon payment of any amounts finally
determined to be due to the target. A hearing shall be held if either party so requests. A bond
ordered pursuant to this section shall not exceed five hundred thousand dollars ($500,000).
(b) The court may waive the bond requirement of subsection (a) of this section if it
finds the person has available assets equal to the amount of the proposed bond or for other good
cause shown.
(c) If the person asserting patent infringement fails within 30 days to pay any fee or
cost ordered by a court in a matter related to the asserted patent infringement, the amount not
paid shall be paid out of the bond posted under subsection (a) of this section, without affecting
the obligation of the person asserting patent infringement to pay any remainder of those fees or
costs not paid out of the bond.
§ 75-141. Enforcement; remedies; damages.
(a) The Attorney General shall have the same authority under this Article to make rules,
conduct civil investigations, bring civil actions, and enter into assurances of discontinuance as
provided under this Chapter. In an action brought by the Attorney General pursuant to this
section, the court may award or impose any relief available under this Chapter.
(b) A target or a person aggrieved by a violation of this Article or by a violation of rules
adopted under this Article may bring an action in superior court against a person that has made
a bad-faith assertion of patent infringement. A court may award to a plaintiff who prevails in an
action brought pursuant to this subsection one or more of the following remedies:
(1) Equitable relief.
(2) Damages.
(3) Costs and fees, including reasonable attorneys' fees.
(4) Exemplary damages in an amount equal to fifty thousand dollars ($50,000)
or three times the total of damages, costs, and fees, whichever is greater.
(c) A court may award to a defendant who prevails in an action brought pursuant to this
section costs and fees, including reasonable attorneys' fees, if the court finds the action was not
well-grounded in fact and warranted by existing law or was interposed for any improper
purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of
litigation.
(d) Joinder of Interested Parties. – In an action arising under subsection (a) or (b) of this
section, the court shall grant a motion by the Attorney General or a target to join an interested
party if the moving party shows that the party alleging infringement has no substantial interest
in the patent or patents at issue other than making demands or asserting such patent claim in
litigation.
(e) In an action arising under subsection (a) or (b) of this section, any person who has
delivered or sent a demand to a target in North Carolina has purposefully availed himself or
herself of the privileges of conducting business in this State and shall be subject to suit in this
State, whether or not the person is transacting or has transacted any other business in this State.
This Article shall be construed as a special jurisdiction statute in accordance with
G.S. 1-75.4(2).
(f) If a party is unable to pay an amount awarded by the court pursuant to subsection (a)
or (b) of this section, the court may find any interested party joined pursuant to subsection (d)
of this section jointly and severally liable for the abusive patent assertion and make the award
recoverable against any or all of the joined interested parties.
(g) This Article shall not be construed to limit rights and remedies available to the State
of North Carolina or to any person under any other law and shall not alter or restrict the
Attorney General’s authority under this Article with regard to conduct involving assertions of
patent infringement."
SECTION 4.2. Section 4.1 of this act is effective when it becomes law and applies
to causes of actions commenced on or after that date and demands made on or after that date.
PART V. SHAREHOLDER ASSENT TO EXCLUSIVE FORUM

SECTION 5.1. Article 7 of Chapter 55 of the General Statutes is amended by adding a new section to read:

§ 55-7.50. Shareholder assent to exclusive forum.

A provision included in the articles of incorporation of a corporation that provides that the State courts of the State of North Carolina shall be the exclusive forum for any derivative proceeding under this Chapter shall be effective and enforceable against any shareholder who shall have voted in favor of approval of any amendment to include such a provision in the articles of incorporation and any shareholder with respect to any shares acquired after the inclusion of such a provision in the articles of incorporation.

SECTION 5.2. Section 5.1 of this act is effective when it becomes law and applies to all articles of incorporation and all amendments to articles of incorporation adopted on or after that date.

PART VI. JOINT SELECT COMMITTEE TO STUDY THE NEED FOR REFORM IN THE LAWS GOVERNING THE APPORTIONMENT OF TORT LIABILITY

SECTION 6.1. There is established the Joint Select Committee to Study the Need for Reform in the Laws Governing Apportionment of Tort Liability.

SECTION 6.2. The Committee shall be composed of 10 members, as follows:

(1) Five members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives.

Vacancies on the Committee shall be filled by the appointing authority. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair who shall be a member of the General Assembly. A quorum of the Committee shall be a majority of its members.

The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may meet at any time upon call of the cochairs. The Committee may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Committee, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

SECTION 6.3. The Committee shall study issues related to the need for reform of the laws governing apportionment of tort liability and successor liability, including adoption of comparative negligence and the abrogation of joint and several liability, and any other issues related to tort liability.

SECTION 6.4. The Committee may make a final report, including any proposed legislation, to the 2015 General Assembly upon its convening. The Committee shall terminate upon filing its final report or upon the convening of the 2015 General Assembly, whichever is earlier.

PART VII. THREE-JUDGE PANEL TO HEAR CLAIMS CHALLENGING THE FACIAL CONSTITUTIONALITY OF AN ACT OF THE GENERAL ASSEMBLY

SECTION 7.1. Article 26A of Chapter 1 of the General Statutes reads as rewritten:

"Article 26A.

Three-Judge Panel for Redistricting Challenges and
one resident superior court judge from the Third, Fourth, Fifth, or Sixth Division. Should any
member of the three-judge panel be disqualified or otherwise unable to serve on the three-judge
panel or is removed from the panel at the discretion of the Chief Justice, the Chief Justice shall
appoint as a replacement another resident superior court judge from the same group of judicial
divisions as the resident superior court judge being replaced.

(c) No order or judgment shall be entered affecting the validity of any act of the
General Assembly that apportions or redistricts State legislative or congressional districts,
or finds that an act of the General Assembly is facially invalid based upon the North
Carolina or United States Constitutions, except by the three-judge panel of the Superior Court
of Wake County organized as provided by subsection (b) or subsection (b1) of this section. In
the event of disagreement among the three resident superior court judges comprising the
two-judge panel, then the opinion of the majority shall prevail.

(d) This section applies only to civil proceedings, and nothing in this section shall be
deeded to apply to a defendant in criminal proceedings or to proceedings in which Chapter
14A of the General Statutes is applicable."

SECTION 7.2. G.S. 1-81.1 reads as rewritten:

"§ 1-81.1. Venue in apportionment or redistricting cases; certain injunctive relief
actions.

(a) Venue lies exclusively with the Wake County Superior Court in any action
concerning any act of the General Assembly apportioning or redistricting State legislative or
congressional districts lies exclusively with the Wake County Superior Court districts.

(a1) Venue lies exclusively with the Wake County Superior Court with regard to any
claim, seeking an order or judgment of a court, either final or interlocutory, to restrain the
enforcement, operation, or execution of an act of the General Assembly, in whole or in part,
based upon an allegation that the act of the General Assembly is unconstitutional on its face
pursuant to the United States Constitution or North Carolina Constitution. Pursuant to
G.S. 1-267.1(a) and G.S. 1-1A, Rule 42(b)(4), claims described in this subsection that are filed
or raised in courts other than Wake County Superior Court or are filed in Wake County
Superior Court, shall be transferred to the three-judge panel of the Wake County Superior
Court if, after all other matters in the action have been resolved, a determination as to the facial
validity of an act of the General Assembly must be made in order to completely resolve any
issues in the case.

(b) Any action brought concerning an act of the General Assembly apportioning or
redistricting the State legislative or congressional districts shall be filed in the Superior Court of
Wake County."

SECTION 7.3. G.S. 1A-1, Rule 42, reads as rewritten:

"Rule 42. Consolidation; separate trials.

(a) Consolidation. – Except as provided in subdivision (b)(2) of this section, when
actions involving a common question of law or fact are pending in one division of the court, the
judge may order a joint hearing or trial of any or all the matters in issue in the actions; he may
order all the actions consolidated; and he may make such orders concerning proceedings
therein as may tend to avoid unnecessary costs or delay. When actions involving a common
question of law or fact are pending in both the superior and the district court of the same
county, a judge of the superior court in which the action is pending may order all the actions
consolidated, and he may make such orders concerning proceedings therein as may tend to
avoid unnecessary costs or delay.

(b) Separate trials.—

(1) The court may in furtherance of convenience or to avoid prejudice and shall
for considerations of venue upon timely motion order a separate trial of any
claim, counterclaim, cross-claim, or third-party claim, or of any separate
issue or of any number of claims, cross-claims, counterclaims, third-party
claims, or issues.

(2) Upon motion of any party in an action that includes a claim commenced
under Article 1G of Chapter 90 of the General Statutes involving a managed
care entity as defined in G.S. 90-21.50, the court shall order separate
discovery and a separate trial of any claim, cross-claim, counterclaim, or
third-party claim against a physician or other medical provider.

(3) Upon motion of any party in an action in tort wherein the plaintiff seeks
damages exceeding one hundred fifty thousand dollars ($150,000), the court
shall order separate trials for the issue of liability and the issue of damages,
unless the court for good cause shown orders a single trial. Evidence relating
solely to compensatory damages shall not be admissible until the trier of fact
has determined that the defendant is liable. The same trier of fact that tries
the issues relating to liability shall try the issues relating to damages.

(4) Pursuant to G.S. 1-267.1, any challenge to the validity of an act of the
General Assembly on its face, other than a challenge to plans apportioning
or redistricting State legislative or congressional districts, shall be heard by a
three-judge panel in the Superior Court of Wake County. If a claimant brings
such a challenge in any court in this State, or if such a challenge is raised by
the defendant in the defendant's motions or pleadings in any court in this
State, the court shall, on its own motion, transfer that portion of the action
challenging the validity of the act of the General Assembly to the Superior
Court of Wake County for resolution by the three-judge panel if, after all
other matters in the action have been resolved, a determination as to the
facial validity of an act of the General Assembly must be made in order to
completely resolve any matters in the case. The court in which the action
originated shall maintain jurisdiction over all matters other than the
constitutional challenge. The court shall stay all matters that are contingent
upon the outcome of the constitutional challenge pending a ruling on the
constitutional challenge and until all appeal rights are exhausted. Once the
three-judge panel has ruled and all appeal rights have been exhausted, the
matter shall be transferred or remanded back to the trial court in which the
action originated for resolution of any outstanding matters."

SECTION 7.4. G.S. 1A-1, Rule 62, reads as rewritten:

"Rule 62. Stay of proceedings to enforce a judgment.

(a) Automatic stay; exceptions – Injunctions and receiverships. – Except as otherwise
stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its
enforcement until the expiration of the time provided in the controlling statute or rule of
appellate procedure for giving notice of appeal from the judgment. Unless otherwise ordered by
the court, an interlocutory or final judgment in an action for an injunction or in a receivership
action shall not be stayed during the period after its entry and until an appeal is taken or during
the pendency of an appeal. The provisions of section (c) govern the suspending, modifying,
restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on motion for new trial or for judgment. – In its discretion and on such
conditions for the security of the adverse party as are proper, the court may stay the execution
of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial
or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a
judgment or order made pursuant to Rule 60, or of a motion for judgment made pursuant to
Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant
to Rule 52(b). If the time provided in the controlling statute or rule of appellate procedure for
giving notice of appeal from the judgment had not expired before a stay under this subsection
was entered, that time shall begin to run immediately upon the expiration of any stay under this section, and no execution shall issue nor shall proceedings be taken for enforcement of the judgment until the expiration of that time.

(c) Injunction pending appeal. – When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay upon appeal. – When an appeal is taken, the appellant may obtain a stay of execution, subject to the exceptions contained in section (a), by proceeding in accordance with and subject to the conditions of G.S. 1-289, G.S. 1-290, G.S. 1-291, G.S. 1-292, G.S. 1-293, G.S. 1-294, and G.S. 1-295.

When stay is had by giving supersedeas bond, the bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal as the case may be, and stay is then effective when the supersedeas bond is approved by the court.

(e) Stay in favor of North Carolina, city, county, local board of education, or agency thereof. – When an appeal is taken by the State of North Carolina, or a city or a county thereof, a local board of education, or an officer in his official capacity or agency thereof or by direction of any department or agency of the State of North Carolina or a city or county thereof or a local board of education and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Power of appellate court not limited. – The provisions of this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(g) Stay of judgment as to multiple claims or multiple parties. – When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(h) Injunction pending appeal of as-applied constitutional challenge. – Notwithstanding any other provision of law where a trial court grants interlocutory, temporary, or permanent injunctive or declaratory relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly as applied against a party in a civil action, the court shall stay the relief granted pending appeal. This subsection only applies where the State or a political subdivision of the State is a party in the civil action. This subsection does not apply to facial challenges heard by a three-judge panel pursuant to G.S. 1-267.1."

SECTION 7.5. G.S. 7A-27 reads as rewritten:

"§ 7A-27. Appeals of right from the courts of the trial divisions.

(a) Appeal lies of right directly to the Supreme Court in all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

(a1) Appeal lies of right directly to the Supreme Court from any order or judgment of a court, either final or interlocutory, that holds that an act of the General Assembly, based upon the United States Constitution or North Carolina Constitution, is unconstitutional on its face.

(b) Appeal lies of right directly to the Court of Appeals in any of the following cases:

(1) From any final judgment of a superior court, other than the one described in subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision
of an administrative agency, except for a final judgment entered upon review
of a court martial under G.S. 127A-62.

(2) From any final judgment of a district court in a civil action.

(3) From any interlocutory order or judgment of a superior court or district court
in a civil action or proceeding which does any of the following:
   a. Affects a substantial right.
   b. In effect determines the action and prevents a judgment from which
      an appeal might be taken.
   c. Discontinues the action.
   d. Grants or refuses a new trial.
   e. Determines a claim prosecuted under G.S. 50-19.1.
   f. Grants temporary injunctive relief restraining the State or a political
      subdivision of the State from enforcing the operation or execution of
      an act of the General Assembly as applied against a party in a civil
      action. This subsection only applies where the State or a political
      subdivision of the State is a party in the civil action. This subsection
      does not apply to facial challenges heard by a three-judge panel
      pursuant to G.S. 1-267.1.

(4) From any other order or judgment of the superior court from which an
appeal is authorized by statute.

(c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013.”

SECTION 7.6. This section becomes effective on July 1, 2014, and applies to any
claim filed on or after that date, whether alleged in any filed action or raised as a defense or
claim during proceedings on any action, that asserts that an act of the General Assembly is
either facially invalid or invalid as applied to a set of factual circumstances, based upon the
North Carolina or United States Constitutions.

PART VIII. LIMIT SUCCESSOR ASBESTOS-RELATED LIABILITIES

SECTION 8.1. Chapter 99E of the General Statutes is amended by adding a new
Article to read:

"Article 5.
"Successor Asbestos-Related Liability.

The following definitions apply in this Article:

(1) Asbestos claim. – 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, including any of the following:
   a. The health effects of exposure to asbestos, including a claim for
      personal injury or death, mental or emotional injury, risk of disease
      or other injury, or the costs of medical monitoring or surveillance.
   b. Any claim made by or on behalf of any person exposed to asbestos or
      a representative, spouse, parent, child, or other relative of the person.
   c. Any claim for damage or loss caused by the installation, presence, or
      removal of asbestos.

(2) Corporation. – Any corporation established under either domestic or foreign
charter and includes a corporate subsidiary and any business entity in which
a corporation participates or is a stockholder, a partner, or a joint venturer.

(3) Successor. – A corporation that assumes or incurs or has assumed or
incurred successor asbestos-related liabilities through operation of law,
including, but not limited to, a merger or consolidation or plan of merger or
consolidation related to such consolidation or merger or by appointment as
§ 99E-41. Applicability.

The limitations in G.S. 99E-42 shall apply to any successor but shall not apply to any of the following:

(a) Workers’ compensation benefits paid by or on behalf of an employer to an employee under the provisions of Chapter 97 of the General Statutes, or a comparable workers’ compensation law of another jurisdiction.

(b) Any claim against a corporation that does not constitute a successor asbestos-related liability.

(c) Any obligation under the National Labor Relations Act, 29 U.S.C. § 151, et seq., as amended, or under any collective bargaining agreement.

(d) A successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

§ 99E-42. Limitation on successor asbestos-related liability.

(a) Except as further limited in subsection (b) of this section, the cumulative successor asbestos-related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection (a) of this section for purposes of determining the limitation of liability of a successor corporation.

§ 99E-43. Establishing fair market value of total gross assets.

(a) A successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under G.S. 99E-35 through any method reasonable under the circumstances, including either of the following:
(1) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction.

(2) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

(c) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of such insurance shall not be affected by this statute nor shall this statute otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract and/or any related agreements, including, without limitation, preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

§ 99E-44. Adjustment.

(a) Except as provided in subsections (b), (c), and (d) of this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of the following:

(1) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the calendar year may be used.

(2) One percent.

(b) The rate defined in subsection (a) of this section shall not be compounded.

(c) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (a) of this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor 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 is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the definition of total gross assets by subsection (c) of G.S. 99E-43.

§ 99E-45. Scope of Article; application.

(a) This Article shall be liberally construed with regard to successors.

(b) This Article shall apply to all asbestos claims filed against a successor on or after the effective date of this act."

SECTION 8.2. Section 8.1 of this act becomes effective January 1, 2015.

PART IX. SEVERABILITY AND EFFECTIVE DATE

SECTION 9.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 9.2. Except as otherwise provided, this act is effective when it becomes law.