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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.



1           (5) State agency. – Every agency, institution, department, bureau, board, or  
2           commission of the State of North Carolina authorized by law to retain  
3           private counsel.

4 **"§ 114-9.4. Procurement.**

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

9           (1) Whether there exists sufficient and appropriate legal and financial resources  
10           within the Attorney General's office to handle the matter.

11           (2) The time and labor required; the novelty, complexity, and difficulty of the  
12           questions involved; and the skill requisite to perform the attorney services  
13           properly.

14           (3) The geographic area where the attorney services are to be provided.

15           (4) The amount of experience desired for the particular kind of attorney services  
16           to be provided and the nature of the private attorney's experience with  
17           similar issues or cases.

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

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

32 **"§ 114-9.5. Contingency Fees.**

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

36           (1) Twenty-five percent (25%) of any damages up to ten million dollars  
37           (\$10,000,000); plus

38           (2) Twenty percent (20%) of any portion of such damages between ten million  
39           dollars (\$10,000,000) and fifteen million dollars (\$15,000,000); plus

40           (3) Fifteen percent (15%) of any portion of such damages between fifteen  
41           million dollars (\$15,000,000) and twenty million dollars (\$20,000,000); plus

42           (4) Ten percent (10%) of any portion of such damages between twenty million  
43           dollars (\$20,000,000) and twenty-five million dollars (\$25,000,000); plus

44           (5) Five percent (5%) of any portion of such damages exceeding twenty-five  
45           million dollars (\$25,000,000).

46           (b) In no event shall the aggregate contingency fee exceed fifty million dollars  
47           (\$50,000,000), exclusive of reasonable costs and expenses, and irrespective of the number of  
48           lawsuits filed or the number of private attorneys retained to achieve the recovery.

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

51 **"§ 114-9.6. Control.**

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

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

7 **"§ 114-9.7. Oversight.**

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

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

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

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

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

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

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

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

40           (5) Disclose the amount of recovery.

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

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

43 **"§ 114-9.8. No expansion of authority.**

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

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

48 **"§ 114-2.3. Use of private counsel limited.**

49       (a) Every agency, institution, department, bureau, board, or commission of the State,  
50 authorized by law to retain private counsel, shall obtain written permission from the Attorney  
51 General prior to employing private counsel. This section does not apply to counties, cities,

1 towns, other municipal corporations or political subdivisions of the State, or any agencies of  
2 these municipal corporations or political subdivisions, or to county or city boards of education.

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

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

### 9 **PART III. AMEND THE LAWS GOVERNING PRODUCTS LIABILITY ACTIONS**

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

#### 12 **"§ 99B-13. Regulatory compliance.**

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

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

- 22 (1) Sold the drug in the United States after the effective date of an order of the  
23 United States Food and Drug Administration to remove the drug from the  
24 market, to withdraw its approval, or to substantially alter the terms of  
25 approval in a manner that would have avoided the claimant's alleged injury.
- 26 (2) Intentionally, and in violation of applicable regulations as determined by  
27 final agency action, withheld from or misrepresented to the United States  
28 Food and Drug Administration information material to the approval or  
29 maintaining of approval of the drug, and such information is relevant to the  
30 harm which the claimant allegedly suffered.
- 31 (3) Made an illegal payment to an official or employee of a government agency  
32 for the purpose of securing or maintaining approval of the drug."

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

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

### 38 **PART IV. PREVENT THE ABUSE OF PATENTS**

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

41 "Article 8.

42 "Abusive Patent Assertions.

#### 43 **"§ 75-136. Title.**

44 This Article shall be known and may be cited as the "Abusive Patent Assertions Act."

#### 45 **"§ 75-137. Purpose.**

46 (a) The General Assembly finds the following:

- 47 (1) North Carolina is home to a growing high-technology, knowledge-based  
48 economy. With its top-tier research universities and active technology  
49 sector, North Carolina is poised to continue its growth. To continue growing,  
50 North Carolina must attract new, small, and mid-sized technology  
51 companies. Doing so will help provide jobs for North Carolina's residents

1 and boost North Carolina's economy. North Carolina also is home to  
2 companies in retail, manufacturing, and other industries, many of whom are  
3 customers of technology companies. Those other businesses are more likely  
4 to succeed if not inhibited by abusive and bad-faith demands and litigation.

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

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

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

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

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

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

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

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

46 (b) The General Assembly seeks, by this narrowly tailored act, to strike a balance  
47 between (i) the interests of efficient and prompt resolution of patent infringement claims,  
48 protection of North Carolina businesses from abusive and bad-faith assertions of patent  
49 infringement, and building of North Carolina's economy and (ii) the intentions to respect  
50 federal law and be careful to not interfere with legitimate patent enforcement actions. Except as

1 specifically set forth in this act regarding bad-faith patent assertions, nothing in this act is  
2 intended to alter current law concerning personal liability of principals in business entities.

3 **"§ 75-138. Definitions.**

4 The following definitions apply in this Article:

- 5 (1) Affiliate. – A business establishment, business, or other legal entity that  
6 wholly or substantially owns, is wholly or substantially owned by, or is  
7 under common ownership with another entity.
- 8 (2) Demand. – A letter, e-mail, or other communication asserting or claiming  
9 that a target has engaged in patent infringement or should obtain a license to  
10 a patent.
- 11 (3) Institution of higher education. – Defined in 20 U.S.C. § 1001(a).
- 12 (4) Interested party. – A person, other than the party alleging infringement, that  
13 (i) is an assignee of the patent or patents at issue; (ii) has a right, including a  
14 contingent right, to enforce or sublicense the patent or patents at issue; or  
15 (iii) has a direct financial interest in the patent or patents at issue, including  
16 the right to any part of an award of damages or any part of licensing revenue.  
17 A "direct financial interest" does not include either of the following:
- 18 a. An attorney or law firm providing legal representation in the civil  
19 action alleging patent infringement if the sole basis for the financial  
20 interest of the attorney or law firm in the patent or patents at issue  
21 arises from the attorney or law firm's receipt of compensation  
22 reasonably related to the provision of the legal representation.
- 23 b. A person whose sole financial interest in the patent or patents at issue  
24 is ownership of an equity interest in the party alleging infringement,  
25 unless such person also has the right or ability to influence, direct, or  
26 control the civil action.
- 27 (5) Operating entity. – A person primarily engaged in, when evaluated with its  
28 affiliates over the preceding 24-month period and when disregarding the  
29 selling and licensing of patents, one or more of the following activities:
- 30 a. Research and technical or experimental work to create, test, qualify,  
31 modify, or validate technologies or processes for commercialization  
32 of goods or services;
- 33 b. Manufacturing; or
- 34 c. The provision of goods or commercial services.
- 35 (6) Target. – A North Carolina person that meets one or more of the following:
- 36 a. The person has received a demand or is the subject of an assertion or  
37 allegation of patent infringement.
- 38 b. The person has been threatened with litigation or is the defendant of  
39 a filed lawsuit alleging patent infringement.
- 40 c. The person has customers who have received a demand asserting that  
41 the person's product, service, or technology has infringed a patent.

42 **"§ 75-139. Abusive patent assertions.**

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

- 46 (1) The demand does not contain all of the following information:
- 47 a. The patent application number or patent number.
- 48 b. The name and address of the patent owner or owners and assignee or  
49 assignees, if any.

- 1           c.       Factual allegations concerning the specific areas in which the target's  
2               products, services, and technology infringe the patent or are covered  
3               by specific, identified claims in the patent.
- 4           d.       An explanation of why the person making the assertion has standing,  
5               if the United States Patent and Trademark Office's assignment  
6               system does not identify the person asserting the patent as the owner.
- 7           (2)       Prior to sending the demand, the person failed to conduct an analysis  
8               comparing the claims in the patent to the target's products, services, and  
9               technology, or the analysis was done but does not identify specific areas in  
10              which the products, services, and technology are covered by the claims in  
11              the patent.
- 12           (3)       The demand lacks the information described in subdivision (1) of this  
13               subsection, the target requests the information, and the person fails to  
14               provide the information within a reasonable period of time.
- 15           (4)       The person demands payment of a license fee or response within an  
16               unreasonably short period of time.
- 17           (5)       The person offers to license the patent for an amount that is not based on a  
18               reasonable estimate of the value of the license, or the person offers to license  
19               the patent for an amount that is based on the cost of defending a potential or  
20               actual lawsuit.
- 21           (6)       The claim or assertion of patent infringement is meritless, and the person  
22               knew or should have known that the claim or assertion is meritless; or the  
23               claim or assertion relies on an interpretation of the patent that was  
24               disclaimed during prosecution, and the person making the claim or assertion  
25               knows or should have known about the disclaimer, or would have known  
26               about the disclaimer if the person reviewed the patent's prosecution history.
- 27           (7)       The claim or assertion of patent infringement is deceptive.
- 28           (8)       The person or its subsidiaries or affiliates have previously or concurrently  
29               filed or threatened to file one or more lawsuits based on the same or similar  
30               claim of patent infringement and (i) those threats or lawsuits lacked the  
31               information described in subdivision (1) of this subsection, or (ii) the person  
32               attempted to enforce the claim of patent infringement in litigation and a  
33               court found the claim to be meritless.
- 34           (9)       The person making the claim or assertion sent the same demand or  
35               substantially the same demand to multiple recipients and made assertions  
36               against a wide variety of products and systems without reflecting those  
37               differences in a reasonable manner in the demands.
- 38           (10)       The person making the claim or assertion is aware of, but does not disclose,  
39               any final, nonfinal, or preliminary postgrant finding of invalidity or  
40               unpatentability involving the patent.
- 41           (11)       The person making the claim or assertion seeks an injunction when that is  
42               objectively unreasonable under the law.
- 43           (12)       Any other factor the court finds relevant.
- 44           (b)       A court may consider the following factors as evidence that a person has not made a  
45               bad-faith assertion of patent infringement:
- 46               (1)       The demand contains the information described in subdivision (1) of  
47               subsection (a) of this section.
- 48               (2)       Where the demand lacks the information described in subdivision (1) of  
49               subsection (a) of this section and the target requests the information, the  
50               person provides the information within a reasonable period of time.

- 1           (3)    The person engages in a good-faith effort to establish that the target has  
2           infringed the patent and to negotiate an appropriate remedy.
- 3           (4)    The person makes a substantial investment in the use of the patent or in the  
4           production or sale of a product or item that the person reasonably believes is  
5           covered by the patent. "Use of the patent" in the preceding sentence means  
6           actual practice of the patent and does not include licensing without actual  
7           practice.
- 8           (5)    The person is either (i) the inventor or joint inventor of the patent or, in the  
9           case of a patent filed by and awarded to an assignee of the original inventor  
10           or joint inventor, is the original assignee or (ii) an institution of higher  
11           education or a technology transfer organization owned or affiliated with an  
12           institution of higher education.
- 13           (6)    The person has demonstrated good-faith business practices in previous  
14           efforts to enforce the patent, or a substantially similar patent, or has  
15           successfully enforced the patent, or a substantially similar patent, through  
16           litigation.
- 17           (7)    Any other factor the court finds relevant.
- 18       (c)    This Article does not apply to any of the following:
- 19           (1)    A demand letter or assertion of patent infringement arising under any of the  
20           following:
- 21               a.    7 U.S.C. § 136 et seq.
- 22               b.    7 U.S.C. § 2321 et seq.
- 23               c.    21 U.S.C. § 301 et seq.
- 24               d.    35 U.S.C. § 161 et seq.
- 25               e.    35 U.S.C. § 271(e)(2).
- 26               f.    42 U.S.C. § 262.
- 27           (2)    A demand letter or assertion of patent infringement by or on behalf of (i) an  
28           institution of higher education incorporated under the laws of and with its  
29           principal offices in North Carolina or (ii) a technology transfer organization  
30           owned by or affiliated with the institution of higher education.
- 31           (3)    A demand letter or assertion of patent infringement by or on behalf of a  
32           nonprofit research organization recognized as exempt from federal income  
33           tax under 26 U.S.C. § 501(c)(3) incorporated under the laws of and with its  
34           principal offices in North Carolina, or a technology transfer organization  
35           owned by or affiliated with the organization.
- 36           (4)    A demand letter or assertion of patent infringement made by an operating  
37           entity or its affiliate.
- 38       (d)    Subject to the provisions of subsections (a) and (b) of this section, and provided the  
39           activities are not carried out in bad faith, nothing in this section shall be construed to deem it an  
40           unlawful practice for any person who owns or has the right to license or enforce a patent to do  
41           any of the following:
- 42               (1)    Advise others of that ownership or right of license or enforcement.
- 43               (2)    Communicate to others that the patent is available for license or sale.
- 44               (3)    Notify another of the infringement of the patent.
- 45               (4)    Seek compensation on account of past or present infringement or for a  
46               license to the patent.

47       **"§ 75-140. Bond.**

48           (a)    Upon motion by a target and a finding by the court that a target has established a  
49           reasonable likelihood that a person has made a bad-faith assertion of patent infringement in  
50           violation of this Chapter, the court shall require the person to post a bond in an amount equal to  
51           a good-faith estimate of the target's fees and costs to litigate the claim and amounts reasonably



1 likely to be recovered under G.S. 75-141, conditioned upon payment of any amounts finally  
2 determined to be due to the target. A hearing shall be held if either party so requests. A bond  
3 ordered pursuant to this section shall not exceed five hundred thousand dollars (\$500,000).

4 (b) The court may waive the bond requirement of subsection (a) of this section if it  
5 finds the person has available assets equal to the amount of the proposed bond or for other good  
6 cause shown.

7 (c) If the person asserting patent infringement fails within 30 days to pay any fee or  
8 cost ordered by a court in a matter related to the asserted patent infringement, the amount not  
9 paid shall be paid out of the bond posted under subsection (a) of this section, without affecting  
10 the obligation of the person asserting patent infringement to pay any remainder of those fees or  
11 costs not paid out of the bond.

12 **"§ 75-141. Enforcement; remedies; damages.**

13 (a) The Attorney General shall have the same authority under this Article to make rules,  
14 conduct civil investigations, bring civil actions, and enter into assurances of discontinuance as  
15 provided under this Chapter. In an action brought by the Attorney General pursuant to this  
16 section, the court may award or impose any relief available under this Chapter.

17 (b) A target or a person aggrieved by a violation of this Article or by a violation of rules  
18 adopted under this Article may bring an action in superior court against a person that has made  
19 a bad-faith assertion of patent infringement. A court may award to a plaintiff who prevails in an  
20 action brought pursuant to this subsection one or more of the following remedies:

21 (1) Equitable relief.

22 (2) Damages.

23 (3) Costs and fees, including reasonable attorneys' fees.

24 (4) Exemplary damages in an amount equal to fifty thousand dollars (\$50,000)  
25 or three times the total of damages, costs, and fees, whichever is greater.

26 (c) A court may award to a defendant who prevails in an action brought pursuant to this  
27 section costs and fees, including reasonable attorneys' fees, if the court finds the action was not  
28 well-grounded in fact and warranted by existing law or was interposed for any improper  
29 purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of  
30 litigation.

31 (d) Joinder of Interested Parties. – In an action arising under subsection (a) or (b) of this  
32 section, the court shall grant a motion by the Attorney General or a target to join an interested  
33 party if the moving party shows that the party alleging infringement has no substantial interest  
34 in the patent or patents at issue other than making demands or asserting such patent claim in  
35 litigation.

36 (e) In an action arising under subsection (a) or (b) of this section, any person who has  
37 delivered or sent a demand to a target in North Carolina has purposefully availed himself or  
38 herself of the privileges of conducting business in this State and shall be subject to suit in this  
39 State, whether or not the person is transacting or has transacted any other business in this State.  
40 This Article shall be construed as a special jurisdiction statute in accordance with  
41 G.S. 1-75.4(2).

42 (f) If a party is unable to pay an amount awarded by the court pursuant to subsection (a)  
43 or (b) of this section, the court may find any interested party joined pursuant to subsection (d)  
44 of this section jointly and severally liable for the abusive patent assertion and make the award  
45 recoverable against any or all of the joined interested parties.

46 (g) This Article shall not be construed to limit rights and remedies available to the State  
47 of North Carolina or to any person under any other law and shall not alter or restrict the  
48 Attorney General's authority under this Article with regard to conduct involving assertions of  
49 patent infringement."

50 **SECTION 4.2.** Section 4.1 of this act is effective when it becomes law and applies  
51 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~~. Challenges and

1 for Certain Challenges to State Laws.

2 **"§ 1-267.1. Three-judge panel for actions challenging plans apportioning or redistricting**  
3 **State legislative or congressional ~~districts~~districts; claims challenging the facial**  
4 **validity of an act of the General Assembly.**

5 (a) Any action challenging the validity of any act of the General Assembly that  
6 apportions or redistricts State legislative or congressional districts shall be filed in the Superior  
7 Court of Wake County and shall be heard and determined by a three-judge panel of the  
8 Superior Court of Wake County organized as provided by subsection (b) of this section.

9 (a1) Except as otherwise provided in subsection (a) of this section, any challenge to the  
10 validity of an act of the General Assembly on its face shall be transferred pursuant to  
11 G.S. 1A-1, Rule 42(b)(4), to the Superior Court of Wake County and shall be heard and  
12 determined by a three-judge panel of the Superior Court of Wake County, organized as  
13 provided by subsection (b1) of this section.

14 (b) Whenever any person files in the Superior Court of Wake County any action  
15 challenging the validity of any act of the General Assembly that apportions or redistricts State  
16 legislative or congressional districts, a copy of the complaint shall be served upon the senior  
17 resident superior court judge of Wake County, who shall be the presiding judge of the  
18 three-judge panel required by subsection (a) of this section. Upon receipt of that complaint, the  
19 senior resident superior court judge of Wake County shall notify the Chief Justice, who shall  
20 appoint two additional resident superior court judges to the three-judge panel of the Superior  
21 Court of Wake County to hear and determine the action. Before making those appointments,  
22 the Chief Justice shall consult with the North Carolina Conference of Superior Court Judges,  
23 which shall provide the Chief Justice with a list of recommended appointments. To ensure that  
24 members of the three-judge panel are drawn from different regions of the State, the Chief  
25 Justice shall appoint to the three-judge panel one resident superior court judge from the First  
26 through Fourth Judicial Divisions and one resident superior court judge from the Fifth through  
27 Eighth Judicial Divisions. In order to ensure fairness, to avoid the appearance of impropriety,  
28 and to avoid political bias, no member of the panel, including the senior resident superior court  
29 judge of Wake County, may be a former member of the General Assembly. Should the senior  
30 resident superior court judge of Wake County be disqualified or otherwise unable to serve on  
31 the three-judge panel, the Chief Justice shall appoint another resident superior court judge of  
32 Wake County as the presiding judge of the three-judge panel. Should any other member of the  
33 three-judge panel be disqualified or otherwise unable to serve on the three-judge panel, the  
34 Chief Justice shall appoint as a replacement another resident superior court judge from the  
35 same group of judicial divisions as the resident superior court judge being replaced.

36 (b1) Any challenge to the validity of an act of the General Assembly on its face filed in  
37 the Superior Court of Wake County, other than a challenge to plans apportioning or  
38 redistricting State legislative or congressional districts that shall be heard pursuant to  
39 subsection (b) of this section, or any claim transferred to the Superior Court of Wake County  
40 pursuant to subsection (a1) of this section, shall be assigned by the senior resident Superior  
41 Court Judge of Wake County to the three-judge panel established pursuant to subsection (b2) of  
42 this section.

43 (b2) The Chief Justice of the Supreme Court shall appoint three resident superior court  
44 judges to a three-judge panel of the Superior Court of Wake County to hear and determine  
45 challenges to the validity of statutes and acts pursuant to subsection (a1) of this section. The  
46 initial judges appointed to the panel shall remain as a standing three-judge panel to hear any  
47 action transferred to the panel for determination pursuant to this section, and the Chief Justice  
48 shall appoint a presiding judge of the three-judge panel. To ensure that members of the  
49 three-judge panel are drawn from different regions of the State, the Chief Justice shall appoint  
50 to the three-judge panel one resident superior court judge from the First or Second Judicial  
51 Division, one resident superior court judge from the Seventh or Eighth Judicial Division, and

1 one resident superior court judge from the Third, Fourth, Fifth, or Sixth Division. Should any  
2 member of the three-judge panel be disqualified or otherwise unable to serve on the three-judge  
3 panel or is removed from the panel at the discretion of the Chief Justice, the Chief Justice shall  
4 appoint as a replacement another resident superior court judge from the same group of judicial  
5 divisions as the resident superior court judge being replaced.

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

13 (d) This section applies only to civil proceedings, and nothing in this section shall be  
14 deemed to apply to a defendant in criminal proceedings or to proceedings in which Chapter  
15 15A of the General Statutes is applicable."

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

17 **"§ 1-81.1. Venue in apportionment or redistricting ~~eases-cases; certain injunctive relief~~**  
18 **actions.**

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

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

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

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

37 **"Rule 42. Consolidation; separate trials.**

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

47 (b) Separate trials. –

48 (1) The court may in furtherance of convenience or to avoid prejudice and shall  
49 for considerations of venue upon timely motion order a separate trial of any  
50 claim, cross-claim, counterclaim, or third-party claim, or of any separate

1 issue or of any number of claims, cross-claims, counterclaims, third-party  
2 claims, or issues.

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

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

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

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

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

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

44 (b) Stay on motion for new trial or for judgment. – In its discretion and on such  
45 conditions for the security of the adverse party as are proper, the court may stay the execution  
46 of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial  
47 or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a  
48 judgment or order made pursuant to Rule 60, or of a motion for judgment made pursuant to  
49 Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant  
50 to Rule 52(b). If the time provided in the controlling statute or rule of appellate procedure for  
51 giving notice of appeal from the judgment had not expired before a stay under this subsection

1 was entered, that time shall begin to run immediately upon the expiration of any stay under this  
2 section, and no execution shall issue nor shall proceedings be taken for enforcement of the  
3 judgment until the expiration of that time.

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

9 (d) Stay upon appeal. – When an appeal is taken, the appellant may obtain a stay of  
10 execution, subject to the exceptions contained in section (a), by proceeding in accordance with  
11 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,  
12 G.S. 1-294, and G.S. 1-295.

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

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

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

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

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

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

41 "**§ 7A-27. Appeals of right from the courts of the trial divisions.**

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

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

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

49 (1) From any final judgment of a superior court, other than the one described in  
50 subsection (a) of this section, or one based on a plea of guilty or nolo  
51 contendere, including any final judgment entered upon review of a decision

1 of an administrative agency, except for a final judgment entered upon review  
2 of a court martial under G.S. 127A-62.

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

4 (3) From any interlocutory order or judgment of a superior court or district court  
5 in a civil action or proceeding which does any of the following:

6 a. Affects a substantial right.

7 b. In effect determines the action and prevents a judgment from which  
8 an appeal might be taken.

9 c. Discontinues the action.

10 d. Grants or refuses a new trial.

11 e. Determines a claim prosecuted under G.S. 50-19.1.

12 f. Grants temporary injunctive relief restraining the State or a political  
13 subdivision of the State from enforcing the operation or execution of  
14 an act of the General Assembly as applied against a party in a civil  
15 action. This subsection only applies where the State or a political  
16 subdivision of the State is a party in the civil action. This subsection  
17 does not apply to facial challenges heard by a three-judge panel  
18 pursuant to G.S. 1-267.1.

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

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

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

## 27 **PART VIII. LIMIT SUCCESSOR ASBESTOS-RELATED LIABILITIES**

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

30 "Article 5.

31 "Successor Asbestos-Related Liability.

### 32 **§ 99E-40. Definitions.**

33 The following definitions apply in this Article:

34 (1) Asbestos claim. – Any claim, wherever or whenever made, for damages,  
35 losses, indemnification, contribution, or other relief arising out of, based on,  
36 or in any way related to asbestos, including any of the following:

37 a. The health effects of exposure to asbestos, including a claim for  
38 personal injury or death, mental or emotional injury, risk of disease  
39 or other injury, or the costs of medical monitoring or surveillance.

40 b. Any claim made by or on behalf of any person exposed to asbestos or  
41 a representative, spouse, parent, child, or other relative of the person.

42 c. Any claim for damage or loss caused by the installation, presence, or  
43 removal of asbestos.

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

47 (3) Successor. – A corporation that assumes or incurs or has assumed or  
48 incurred successor asbestos-related liabilities through operation of law,  
49 including, but not limited to, a merger or consolidation or plan of merger or  
50 consolidation related to such consolidation or merger or by appointment as  
51

- 1 administrator or as trustee in bankruptcy, debtor in possession, liquidation,  
2 or receivership and that became a successor before January 1, 1972.  
3 Successor includes any of that successor corporation's successors.  
4 (4) Successor asbestos-related liability. – Any liabilities, whether known or  
5 unknown, asserted or unasserted, absolute or contingent, accrued or  
6 unaccrued, liquidated or unliquidated, or due or to become due, which are  
7 related in any way to asbestos claims and were assumed or incurred by a  
8 corporation as a result of or in connection with a merger or consolidation, or  
9 the plan of merger or consolidation related to the merger or consolidation  
10 with or into another corporation, or that are related in any way to asbestos  
11 claims based on the exercise of control or the ownership of stock of the  
12 corporation before the merger or consolidation. The term includes liabilities  
13 that, after the time of the merger or consolidation for which the fair market  
14 value of total gross assets is determined under G.S. 99E-43, were or are paid  
15 or otherwise discharged or committed to be paid or otherwise discharged, by  
16 or on behalf of the corporation or by a successor of the corporation, or by or  
17 on behalf of a transferor, in connection with settlements, judgments, or other  
18 discharges in this State or another jurisdiction.  
19 (5) Transferor. – A corporation from which successor asbestos-related liabilities  
20 are or were assumed or incurred.

21 **"§ 99E-41. Applicability.**

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

- 24 (1) Workers' compensation benefits paid by or on behalf of an employer to an  
25 employee under the provisions of Chapter 97 of the General Statutes, or a  
26 comparable workers' compensation law of another jurisdiction.  
27 (2) Any claim against a corporation that does not constitute a successor  
28 asbestos-related liability.  
29 (3) Any obligation under the National Labor Relations Act, 29 U.S.C. § 151, et  
30 seq., as amended, or under any collective bargaining agreement.  
31 (4) A successor that, after a merger or consolidation, continued in the business  
32 of mining asbestos or in the business of selling or distributing asbestos fibers  
33 or in the business of manufacturing, distributing, removing, or installing  
34 asbestos-containing products which were the same or substantially the same  
35 as those products previously manufactured, distributed, removed, or installed  
36 by the transferor.

37 **"§ 99E-42. Limitation on successor asbestos-related liability.**

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

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

48 **"§ 99E-43. Establishing fair market value of total gross assets.**

49 (a) A successor corporation may establish the fair market value of total gross assets for  
50 the purpose of the limitations under G.S. 99E-35 through any method reasonable under the  
51 circumstances, including either of the following:



- 1           (1) By reference to the going concern value of the assets or to the purchase price  
2           attributable to or paid for the assets in an arms-length transaction.  
3           (2) In the absence of other readily available information from which the fair  
4           market value can be determined, by reference to the value of the assets  
5           recorded on a balance sheet.

6           (b) Total gross assets include intangible assets.

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

20 **"§ 99E-44. Adjustment.**

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

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

- 29           (2) One percent.

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

31           (c) The adjustment of the fair market value of total gross assets shall continue as  
32 provided in subsection (a) of this section until the date the adjusted value is first exceeded by  
33 the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by  
34 or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor  
35 after the time of the merger or consolidation for which the fair market value of total gross  
36 assets is determined.

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

40 **"§ 99E-45. Scope of Article; application.**

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

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

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

45  
46 **PART IX. SEVERABILITY AND EFFECTIVE DATE**

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

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