

# ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 648

AMENDMENT NO. A3  
(to be filled in by  
Principal Clerk)

S648-ATG-77 [v.2]

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Comm. Sub. [NO]  
Amends Title [YES]  
Third Edition

Date \_\_\_\_\_, 2014

Senator Rucho

1 moves to amend the bill on page 1, lines 4-7, by rewriting those lines to read:

2  
3 "TO ALLOW FOR SHAREHOLDER ASSENT TO EXCLUSIVE FORUM, TO CREATE A  
4 THREE-JUDGE PANEL TO RULE ON CLAIMS THAT AN ACT OF THE GENERAL  
5 ASSEMBLY IS FACIALLY INVALID BASED UPON THE NORTH CAROLINA OR  
6 UNITED STATES CONSTITUTIONS, AND TO LIMIT ASBESTOS-RELATED  
7 LIABILITIES FOR CERTAIN SUCCESSOR CORPORATIONS.";

8  
9 And on page 14, lines 37-38, by inserting the following between those lines:

10  
11 **"PART VIII. LIMIT SUCCESSOR ASBESTOS-RELATED LIABILITIES**

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

14 "Article 5.

15 "Successor Asbestos-Related Liability.

16 **"§ 99E-40. Definitions.**

17 The following definitions apply in this Article:

- 18 (1) Asbestos claim. – Any claim, wherever or whenever made, for damages,  
19 losses, indemnification, contribution, or other relief arising out of, based on,  
20 or in any way related to asbestos, including any of the following:
  - 21 a. The health effects of exposure to asbestos, including a claim for  
22 personal injury or death, mental or emotional injury, risk of disease  
23 or other injury, or the costs of medical monitoring or surveillance.
  - 24 b. Any claim made by or on behalf of any person exposed to asbestos or  
25 a representative, spouse, parent, child, or other relative of the person.
  - 26 c. Any claim for damage or loss caused by the installation, presence, or  
27 removal of asbestos.
- 28 (2) Corporation. – Any corporation established under either domestic or foreign  
29 charter and includes a corporate subsidiary and any business entity in which  
30 a corporation participates or is a stockholder, a partner, or a joint venturer.
- 31 (3) Successor. – A corporation that assumes or incurs or has assumed or  
32 incurred successor asbestos-related liabilities through operation of law,



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1 including, but not limited to, a merger or consolidation or plan of merger or  
 2 consolidation related to such consolidation or merger or by appointment as  
 3 administrator or as trustee in bankruptcy, debtor in possession, liquidation,  
 4 or receivership and that became a successor before January 1, 1972.  
 5 Successor includes any of that successor corporation's successors.

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

21 (5) Transferor. – A corporation from which successor asbestos-related liabilities  
 22 are or were assumed or incurred.

23 **"§ 99E-41. Applicability.**

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

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

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

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

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

39 **"§ 99E-42. Limitation on successor asbestos-related liability.**

40 (a) Except as further limited in subsection (b) of this section, the cumulative successor  
 41 asbestos-related liabilities of a successor corporation are limited to the fair market value of the  
 42 total gross assets of the transferor determined as of the time of the merger or consolidation. The

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1 successor corporation does not have responsibility for successor asbestos-related liabilities in  
2 excess of this limitation.

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

8 **"§ 99E-43. Establishing fair market value of total gross assets.**

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

12 (1) By reference to the going concern value of the assets or to the purchase price  
13 attributable to or paid for the assets in an arms-length transaction.

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

17 (b) Total gross assets include intangible assets.

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

31 **"§ 99E-44. Adjustment.**

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

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

40 (2) One percent.

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

42 (c) The adjustment of the fair market value of total gross assets shall continue as  
43 provided in subsection (a) of this section until the date the adjusted value is first exceeded by

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1 the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by  
2 or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor  
3 after the time of the merger or consolidation for which the fair market value of total gross  
4 assets is determined.

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

8 **"§ 99E-45. Scope of Article; application.**

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

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

12 **SECTION 8.2** Section 8.1 of this act becomes effective January 1, 2015.";

14 And on page 14, lines 38-43, by rewriting those lines to read:

16 **"PART IX. SEVERABILITY AND EFFECTIVE DATE**

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

20 **SECTION 9.2.** Except as otherwise provided, this act is effective when it becomes  
21 law."  
22  
23

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

**The official copy of this document, with signatures  
and vote information, is available in the  
Senate Principal Clerk's Office**