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Short Title: Business Court Modernization.

(Public)

Sponsors:

Referred to:

May 28, 2014

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE BUSINESS COURT BY MAKING TECHNICAL,
3 CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE PROCEDURES FOR
4 COMPLEX BUSINESS CASES AND TO STREAMLINE THE PROCESS OF
5 CORPORATE REORGANIZATION UTILIZING HOLDING COMPANIES, AND TO
6 CREATE A THREE-JUDGE PANEL TO RULE ON CLAIMS THAT AN ACT OF THE
7 GENERAL ASSEMBLY IS FACIALLY INVALID BASED UPON THE NORTH
8 CAROLINA OR UNITED STATES CONSTITUTIONS.

9 The General Assembly of North Carolina enacts:

10 SECTION 1.(a) G.S. 7A-27(a) reads as rewritten:

11 "§ 7A-27. Appeals of right from the courts of the trial divisions.

12 (a) Appeal lies of right directly to the Supreme Court in any of the following cases:

13 (1) ~~all~~ All cases in which the defendant is convicted of murder in the first degree
14 and the judgment of the superior court includes a sentence of death.

15 (2) From any final judgment in a case designated as a mandatory complex
16 business case pursuant to G.S. 7A-45.4 or designated as a discretionary
17 complex business case pursuant to Rule 2.1 of the General Rules of Practice
18 for the Superior and District Courts.

19 (3) From any interlocutory order of a Business Court Judge which does any of
20 the following:

21 a. Affects a substantial right.

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

24 c. Discontinues the action.

25 d. Grants or refuses a new trial."

26 SECTION 1.(b) Appeals pursuant to G.S. 7A-27(a)(2) and G.S. 7A-27(a)(3) shall
27 be taken in accordance with the North Carolina Rules of Appellate Procedure applicable to civil
28 cases.

29 SECTION 2. G.S. 7A-45.3 reads as rewritten:

30 "§ 7A-45.3. Superior court judges designated for complex business cases.

31 The Chief Justice may exercise the authority under rules of practice prescribed pursuant to
32 G.S. 7A-34 to designate one or more of the special superior court judges authorized by
33 G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice.
34 Any judge so designated shall be known as a Business Court Judge and shall preside in the



1 Business Court. If there is more than one business court judge, the Chief Justice may designate
2 one of them as the Senior Business Court Judge. If there is no designation by the Chief Justice,
3 the judge with the longest term of service on the court shall serve as Senior Business Court
4 Judge until the Chief Justice makes an appointment to the position. The presiding Business
5 Court Judge shall issue a written opinion in connection with any order granting or denying a
6 motion under G.S. 1A-1, Rule 12, 56, 59, or 60 or any order finally disposing of a complex
7 business case."

8 **SECTION 3.(a)** G.S. 7A-45.4 reads as rewritten:

9 **"§ 7A-45.4. Designation of complex business cases.**

10 (a) ~~A mandatory complex business case is~~ Any party may designate as a mandatory
11 complex business case an action that involves a material issue related to any of the
12 following:

- 13 (1) ~~The law governing corporations, except charitable and religious~~
14 ~~organizations qualified under G.S. 55A-1-40(4) on the grounds of religious~~
15 ~~purpose, partnerships, limited liability companies, and limited liability~~
16 ~~partnerships, including issues concerning governance, involuntary~~
17 ~~dissolution of a corporation, mergers and acquisitions, breach of duty of~~
18 ~~directors, election or removal of directors, enforcement or interpretation of~~
19 ~~shareholder agreements, and derivative actions.~~ Disputes involving the law
20 governing corporations, except charitable and religious organizations
21 qualified under G.S. 55A-1-40(4) on the grounds of religious purpose,
22 partnerships, and limited liability companies, including disputes arising
23 under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.
- 24 (2) ~~Securities law, including proxy disputes and tender offer disputes.~~ Disputes
25 involving securities, including disputes arising under Chapter 78A of the
26 General Statutes.
- 27 (3) ~~Antitrust law, except claims based solely on unfair competition under~~
28 ~~G.S. 75-1.1.~~ Disputes involving antitrust or unfair competition law, including
29 disputes arising under Chapter 75 of the General Statutes, that do not arise
30 solely under G.S. 75-1.1 or Article 2 of Chapter 75 of the General Statutes.
- 31 (4) ~~State trademark or unfair competition law, except claims based solely on~~
32 ~~unfair competition under G.S. 75-1.1.~~ Disputes involving trademark law,
33 including disputes arising under Chapter 80 of the General Statutes.
- 34 (5) Intellectual property law, including software licensing disputes. Disputes
35 involving the ownership, use, licensing, lease, installation, or performance of
36 intellectual property, including computer software, software applications,
37 information technology and systems, data and data security,
38 pharmaceuticals, biotechnology products, and bioscience technologies.
- 39 (6) ~~The Internet, electronic commerce, and biotechnology.~~
- 40 (7) ~~Tax law, when the dispute has been the subject of a contested tax case for~~
41 ~~which judicial review is requested under G.S. 105-241.16 or the dispute is a~~
42 ~~civil action under G.S. 105-241.17.~~
- 43 (8) Disputes involving trade secrets, including disputes arising under Article 24
44 of Chapter 66 of the General Statutes, except for disputes involving
45 enforcement of a non-competition or non-solicitation covenant against an
46 individual employee.
- 47 (9) Contract disputes in which all of the following conditions are met:
 - 48 a. At least one plaintiff and at least one defendant is an entity
49 authorized to transact business in North Carolina under Chapter 55,
50 55A, 55B, 57D, or 59 of the General Statutes.

- 1 b. The complaint asserts a claim for breach of contract or seeks a
2 declaration of rights, status, or other legal relations under a contract.
3 c. The amount in controversy computed in accordance with
4 G.S. 7A-243 is at least one million dollars (\$1,000,000).
5 d. All parties consent to the designation.

6 ~~(b) Any party may designate a civil action or a petition for judicial review under~~
7 ~~G.S. 105-241.16 as a mandatory complex business case by filing a Notice of Designation in the~~
8 ~~Superior Court in which the action has been filed and simultaneously serving the notice on each~~
9 ~~opposing party or counsel and on the Special Superior Court Judge for Complex Business~~
10 ~~Cases who is then the senior Business Court Judge. A copy of the notice shall also be sent~~
11 ~~contemporaneously by e-mail or facsimile transmission to the Chief Justice of the Supreme~~
12 ~~Court for approval of the designation of the action as a mandatory complex business case and~~
13 ~~assignment to a specific Business Court Judge. The following actions shall be designated as~~
14 ~~mandatory complex business cases:~~

- 15 (1) An action involving a material issue related to tax law that has been the
16 subject of a contested tax case for which judicial review is requested under
17 G.S. 105-241.16 shall be designated as a mandatory complex business case
18 by the petitioner.
19 (2) An action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection
20 (a) of this section in which the amount in controversy computed in
21 accordance with G.S. 7A-243 is at least five million dollars (\$5,000,000)
22 shall be designated as a mandatory complex business case by the party
23 whose pleading caused the amount in controversy to equal or exceed five
24 million dollars (\$5,000,000).
25 (3) An action involving regulation of pole attachments brought pursuant to
26 G.S. 62-350 shall be designated as a mandatory complex business case by
27 the plaintiff.

28 (c) A party designating an action as a mandatory complex business case shall file a
29 Notice of Designation in the Superior Court in which the action has been filed, shall
30 contemporaneously serve the notice on each opposing party or counsel and on the Special
31 Superior Court Judge for Complex Business Cases who is then the senior Business Court
32 Judge, and shall contemporaneously send a copy of the notice by e-mail to the Chief Justice of
33 the Supreme Court for approval of the designation of the action as a mandatory complex
34 business case and assignment to a specific Business Court Judge. The Notice of Designation
35 shall, in good faith and based on information reasonably available, succinctly state the basis of
36 the designation and include a certificate by or on behalf of the designating party that the civil
37 action meets the criteria for designation as a mandatory complex business case pursuant to
38 subsection (a) or (b) of this section.

39 (d) The Notice of Designation shall be filed:

- 40 (1) By the plaintiff, the third-party plaintiff, or the petitioner for judicial review
41 contemporaneously with the filing of the complaint, third-party complaint,
42 or the petition for judicial review in the action.
43 (2) By any intervenor when the intervenor files a motion for permission to
44 intervene in the action.
45 (3) By any defendant or any other party within 30 days of receipt of service of
46 the pleading seeking relief from the defendant or party.
47 (4) By any party whose pleading caused the amount in controversy computed in
48 accordance with G.S. 7A-243 to equal or exceed five million dollars
49 (\$5,000,000) contemporaneously with the filing of that pleading.

50 (e) Within 30 days after service of the Notice of Designation, any other party may, in
51 good faith, file and serve an opposition to the designation of the action as a mandatory complex

1 business case. The opposition to the designation of the action shall assert all grounds on which
2 the party opposing designation objects to the designation, and any grounds not asserted shall be
3 deemed conclusively waived. Within 30 days after the entry of an order staying a pending
4 action pursuant to subsection (g) of this section, any party opposing the stay shall file an
5 objection with the Business Court asserting all grounds on which the party objects to the case
6 proceeding in the Business Court, and any grounds not asserted shall be deemed conclusively
7 waived. Based on the opposition or ~~ex-mero-motu~~, on its own motion, the Business Court Judge
8 may shall rule by written order on the opposition or objection and determine ~~that~~ whether the
9 action should ~~not~~ be designated as a mandatory complex business case. If a party disagrees with
10 the decision, the party may appeal to the Chief Justice of the Supreme Court in accordance with
11 G.S. 7A-27(a).

12 (f) Once a designation is filed under subsection (d) of this section, and after preliminary
13 approval by the Chief Justice, a case shall be designated and administered a complex business
14 case. All proceedings in the action shall be before the Business Court Judge to whom it has
15 been assigned unless and until an order has been entered under subsection (e) of this section
16 ordering that the case not be designated a mandatory complex business case or the Chief Justice
17 revokes approval. If complex business case status is revoked or denied, the action shall be
18 treated as any other civil action, unless it is designated as an exceptional civil case or a
19 discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for
20 the Superior and District Courts.

21 (g) If an action required by subsection (b) of this section to be designated as a
22 mandatory complex business case is not so designated, the Superior Court in which the action
23 has been filed shall by order entered sua sponte stay the action until it has been designated as a
24 mandatory complex business case in accordance with this section. The party designating the
25 action as a mandatory complex business case shall pay the filing fee required pursuant to
26 G.S. 7A-305(a)(2)."

27 **SECTION 3.(b)** Nothing in this section is intended to permit actions for personal
28 injury grounded in tort to be designated as mandatory complex business cases.

29 **SECTION 4.** G.S. 7A-305 reads as rewritten:

30 **"§ 7A-305. Costs in civil actions.**

31 (a) In every civil action in the superior or district court, except for actions brought
32 under Chapter 50B of the General Statutes, shall be assessed:

33 ...

34 (2) For support of the General Court of Justice, the sum of one hundred eighty
35 dollars (\$180.00) in the superior court and the sum of one hundred thirty
36 dollars (\$130.00) in the district court except that if the case is assigned to a
37 magistrate the sum shall be eighty dollars (\$80.00). If a case is assigned to a
38 special superior court judge as a complex business case under G.S. 7A-45.3,
39 upon assignment the party filing the notice of designation pursuant to
40 G.S. 7A-45.4 or the motion for complex business designation shall pay an
41 additional one thousand one hundred dollars ~~(\$1,000)~~ (\$1,100) for support of
42 the General Court of Justice; if a case is assigned to a special superior court
43 judge as a complex business case under G.S. 7A-45.3 by a court on its own
44 motion, upon assignment the plaintiff shall pay an additional one thousand
45 one hundred dollars ~~(\$1,000)~~ (\$1,100) for support of the General Court of
46 Justice. Sums collected under this subdivision shall be remitted to the State
47 Treasurer. The State Treasurer shall remit the sum of one dollar and fifty
48 cents (\$1.50) of each fee collected under this subdivision to the North
49 Carolina State Bar for the provision of services described in G.S. 7A-474.4,
50 and ninety-five cents (\$.95) of each fee collected under this subdivision to

1 the North Carolina State Bar for the provision of services described in
2 G.S. 7A-474.19.

3 ...
4 (d) The following expenses, when incurred, are assessable or recoverable, as the case
5 may be. The expenses set forth in this subsection are complete and exclusive and constitute a
6 limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

7 ...
8 (12) The fee assessed pursuant to subdivision (2) of subsection (a) of this section
9 upon assignment of a case to a special superior court judge as a complex
10 business case.

11"

12 **SECTION 5.** G.S. 7A-343 reads as rewritten:

13 **"§ 7A-343. Duties of Director.**

14 The Director is the Administrative Officer of the Courts, and the Director's duties include
15 all of the following:

16 ...
17 (8) Prepare and submit an annual report on the work of the Judicial Department
18 to the Chief Justice, and transmit a copy to each member of the General
19 Assembly. The annual report shall include the activities of each North
20 Carolina Business Court site, including the number of new, closed, and
21 pending cases, the average age of pending cases, and the annual
22 expenditures for the prior fiscal year.

23 (8a) Prepare and submit a semiannual report on the activities of each North
24 Carolina business court site to the Chief Justice and to each member of the
25 General Assembly. The semiannual report required under this subdivision
26 shall be separate from the report required under subdivision (8) of this
27 section and shall include the total number of civil cases pending in each
28 business court site over three years after being designated as a mandatory
29 complex business case, motions pending over six months after being filed,
30 and civil cases in which bench trials have been concluded for over six
31 months without entry of judgment, including any accompanying explanation
32 provided by the Business Court.

33"

34 **SECTION 6.(a)** Article 11 of Chapter 55 of the General Statutes is amended by
35 adding a new section to read:

36 **"§ 55-11-11 Merger to effect a holding company reorganization.**

37 (a) The following definitions apply in this section:

38 (1) "Company official" has the same meaning as in G.S. 57D-1-03.

39 (2) "Constituent corporation" means the original corporation incorporated under
40 the laws of this State or limited liability company organized under the laws
41 of this State that is a party to a merger that is intended to create a holding
42 company structure under a plan of merger that satisfies the requirements of
43 this section.

44 (3) "Holding company" means a corporation incorporated under the laws of this
45 State or limited liability company organized under the laws of this State that
46 from its incorporation or organization until consummation of a merger
47 governed by this section was at all times a direct or indirect wholly owned
48 subsidiary of the constituent corporation and whose capital stock is issued in
49 the merger.

50 (4) "Manager" has the same meaning as in G.S. 57D-1-03.

- 1 (5) "Organizational documents" means the articles of incorporation of a
2 corporation or the articles of organization of a limited liability company.
3 (6) "Surviving entity" means the corporation incorporated under the laws of this
4 State or limited liability company organized under the laws of this State that
5 is the surviving entity in a merger of a constituent corporation with or into a
6 single direct or indirect wholly owned subsidiary of the constituent
7 corporation, which immediately following the merger is a direct or indirect
8 wholly owned subsidiary of the holding company.

9 (b) Notwithstanding the requirements of G.S. 55-11-03, unless expressly required by its
10 articles of incorporation, no vote of shareholders of a constituent corporation is required to
11 authorize a merger with or into a single direct or indirect wholly-owned subsidiary of the
12 constituent corporation if all of the following conditions are satisfied:

- 13 (1) The constituent corporation and the direct or indirect wholly-owned
14 subsidiary of the constituent corporation are the only constituent entities to
15 the merger.
16 (2) Each share or fraction of a share of the capital stock of the constituent
17 corporation outstanding immediately prior to the effective time of the merger
18 is converted in the merger into a share or equal fraction of a share of capital
19 stock of a holding company having the same designations, rights, powers
20 and preferences, and the qualifications, limitations and restrictions thereof,
21 as the share or fraction of a share of the capital stock of the constituent
22 corporation being converted in the merger.
23 (3) The holding company and the constituent corporation are both corporations
24 of this State and the direct or indirect wholly-owned subsidiary that is the
25 other constituent entity to the merger is a corporation or limited liability
26 company of this State.
27 (4) The articles of incorporation and bylaws of the holding company
28 immediately following the effective time of the merger contain provisions
29 identical to the articles of incorporation and bylaws of the constituent
30 corporation immediately prior to the effective time of the merger other than
31 provisions, if any, regarding any of the following:
32 a. The incorporator or incorporators.
33 b. The corporate name.
34 c. The registered office and agent.
35 d. The initial board of directors and the initial subscribers for shares.
36 e. Any provisions contained in any amendment to the articles of
37 incorporation that were necessary to effect a change, exchange,
38 reclassification, subdivision, combination, or cancellation of stock, if
39 the change, exchange, reclassification, subdivision, combination, or
40 cancellation has become effective.
41 (5) As a result of the merger the constituent corporation or its successor
42 becomes or remains a direct or indirect wholly-owned subsidiary of the
43 holding company.
44 (6) The directors of the constituent corporation become or remain the directors
45 of the holding company upon the effective time of the merger.
46 (7) Except as provided in subsections (c) and (d) of this section, the
47 organizational documents of the surviving entity immediately following the
48 effective time of the merger contain provisions identical to the articles of
49 incorporation of the constituent corporation immediately prior to the
50 effective time of the merger other than provisions, if any, regarding any of
51 the following:

- 1 a. The incorporator or incorporators.
2 b. The corporate or entity name.
3 c. The registered office and agent.
4 d. The initial board of directors and the initial subscribers for shares.
5 e. References to members rather than stockholders or shareholders.
6 f. References to interests, units, or other similar terms rather than stock
7 or shares.
8 g. References to managers, managing members, or other members of
9 the governing body rather than directors.
10 h. Any provisions contained in any amendment to the articles of
11 incorporation that were necessary to effect a change, exchange,
12 reclassification, subdivision, combination, or cancellation of stock, if
13 the change, exchange, reclassification, subdivision, combination, or
14 cancellation has become effective.
15 (8) The shareholders of the constituent corporation do not recognize gain or loss
16 for United States federal income tax purposes as determined by the board of
17 directors of the constituent corporation.
18 (c) Notwithstanding the provisions of subdivision (7) of subsection (b) of this section, if
19 the organizational documents of the surviving entity do not contain the following provisions,
20 they shall be amended in the merger to contain provisions requiring all of the following:
21 (1) Any act or transaction by or involving the surviving entity, other than the
22 election or removal of directors or managers, managing members, or other
23 members of the governing body of the surviving entity, that requires for its
24 adoption under this Chapter or its organizational documents the approval of
25 the shareholders or members of the surviving entity shall, by specific
26 reference to this subsection, require, in addition, the approval of the
27 shareholders of the holding company (or any successor by merger), by the
28 same vote as is required by this Chapter or by the organizational documents
29 of the surviving entity. For purposes of this subdivision, any surviving entity
30 that is not a corporation shall include in the amendment a requirement that
31 the approval of the shareholders of the holding company be obtained for any
32 act or transaction by or involving the surviving entity, other than the election
33 or removal of directors or managers, managing members, or other members
34 of the governing body of the surviving entity, which would require the
35 approval of the shareholders of the surviving entity if the surviving entity
36 were a corporation subject to this Chapter.
37 (2) Any amendment of the organizational documents of a surviving entity that is
38 not a corporation that would, if adopted by a corporation subject to this
39 Chapter, be required to be included in the articles of incorporation of the
40 corporation shall, by specific reference to this subsection, require, in
41 addition, the approval of the shareholders of the holding company (or any
42 successor by merger), by the same vote as is required by this Chapter or by
43 the organizational documents of the surviving entity.
44 (3) The business and affairs of a surviving entity that is not a corporation shall
45 be managed by or under the direction of a board of directors, board of
46 managers, or other governing body consisting of individuals who are subject
47 to the same fiduciary duties applicable to, and who are liable for breach of
48 those duties to the same extent as, directors of a corporation subject to this
49 Chapter.
50 (d) Notwithstanding the provisions of subdivision (7) of subsection (b) of this section,
51 the organizational documents of the surviving entity may be amended in the merger to reduce

1 the number of classes and shares of capital stock or other equity interests or units that the
2 surviving entity is authorized to issue and to eliminate any provision authorized by
3 G.S. 55-8-06.

4 (e) Neither subsection (c) of this section nor any provision of a surviving entity's
5 organizational documents required by this section shall be deemed or construed to require
6 approval of the shareholders of the holding company to elect or remove directors or managers,
7 managing members, or other members of the governing body of the surviving entity.

8 (f) From and after the effective time of a merger adopted by a constituent corporation
9 by action of its board of directors and without any vote of shareholders pursuant to this section,
10 the following provisions apply:

11 (1) To the extent the restrictions of Articles 9 and 9A of this Chapter applied to
12 the constituent corporation and its shareholders at the effective time of the
13 merger, such restrictions shall apply to the holding company and its
14 shareholders immediately after the effective time of the merger as though it
15 were the constituent corporation.

16 (2) If the corporate name of the holding company immediately following the
17 effective time of the merger is the same as the corporate name of the
18 constituent corporation immediately prior to the effective time of the merger,
19 the shares of capital stock of the holding company into which the shares of
20 capital stock of the constituent corporation are converted in the merger shall
21 be represented by the stock certificates that previously represented shares of
22 capital stock of the constituent corporation.

23 (3) To the extent a shareholder of the constituent corporation immediately prior
24 to the merger had standing to institute or maintain derivative litigation on
25 behalf of the constituent corporation, nothing in this section limits or
26 extinguishes that standing.

27 (g) If a plan of merger is adopted by a constituent corporation by action of its board of
28 directors and without any vote of shareholders pursuant to this section, but otherwise in
29 accordance with G.S. 55-11-01, the secretary or assistant secretary of the constituent
30 corporation shall certify on the plan of merger that the plan has been adopted pursuant to this
31 section and that the conditions specified in subsection (b) of this section have been satisfied.
32 This certification on the plan of merger is not required if a certificate of merger or
33 consolidation is registered in lieu of filing the plan of merger. The plan so adopted and certified
34 shall then be filed and become effective, in accordance with G.S. 55-11-05. That filing is a
35 representation by the person who executes the agreement that the facts stated in the certificate
36 remain true immediately prior to the filing.

37 (h) Except as otherwise provided in this section:

38 (1) The provisions of G.S. 55-11-06(a) and G.S. 55-11-06(c) shall apply to any
39 merger effected pursuant to this section.

40 (2) The provisions of Article 13 of this Chapter shall not apply to any merger
41 effected pursuant to this section."

42 **SECTION 6.(b)** G.S. 55-11-06(a) reads as rewritten:

43 **"§ 55-11-06. Effect of merger or share exchange.**

44 (a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, ~~or 55-11-09~~
45 ~~55-11-09, or 55-11-11~~ takes effect:

46 "...."

47 **SECTION 7.(a)** Article 26A of Chapter 1 of the General Statutes reads as
48 rewritten:

49 "Article 26A.

50 "Three-Judge Panel for Redistricting ~~Challenges~~. Challenges and
51 for Certain Challenges to State Laws.

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

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

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

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

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

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

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

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

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

15 **SECTION 7.(b)** G.S. 1-81.1 reads as rewritten:

16 **"§ 1-81.1. Venue in apportionment or redistricting ~~eases cases; certain injunctive relief~~**
17 **actions.**

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

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

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

35 **SECTION 7.(c)** G.S. 1A-1, Rule 42, reads as rewritten:

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

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

46 (b) Separate trials. –

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

- 1 (2) Upon motion of any party in an action that includes a claim commenced
2 under Article 1G of Chapter 90 of the General Statutes involving a managed
3 care entity as defined in G.S. 90-21.50, the court shall order separate
4 discovery and a separate trial of any claim, cross-claim, counterclaim, or
5 third-party claim against a physician or other medical provider.
- 6 (3) Upon motion of any party in an action in tort wherein the plaintiff seeks
7 damages exceeding one hundred fifty thousand dollars (\$150,000), the court
8 shall order separate trials for the issue of liability and the issue of damages,
9 unless the court for good cause shown orders a single trial. Evidence relating
10 solely to compensatory damages shall not be admissible until the trier of fact
11 has determined that the defendant is liable. The same trier of fact that tries
12 the issues relating to liability shall try the issues relating to damages.
- 13 (4) Pursuant to G.S. 1-267.1, any challenge to the validity of an act of the
14 General Assembly on its face, other than a challenge to plans apportioning
15 or redistricting State legislative or congressional districts, shall be heard by a
16 three-judge panel in the Superior Court of Wake County. If a claimant brings
17 such a challenge in any court in this State, or if such a challenge is raised by
18 the defendant in the defendant's motions or pleadings in any court in this
19 State, the court shall, on its own motion, transfer that portion of the action
20 challenging the validity of the act of the General Assembly to the Superior
21 Court of Wake County for resolution by the three-judge panel if, after all
22 other matters in the action have been resolved, a determination as to the
23 facial validity of an act of the General Assembly must be made in order to
24 completely resolve any matters in the case. The court in which the action
25 originated shall maintain jurisdiction over all matters other than the
26 constitutional challenge. The court shall stay all matters that are contingent
27 upon the outcome of the constitutional challenge pending a ruling on the
28 constitutional challenge and until all appeal rights are exhausted. Once the
29 three-judge panel has ruled and all appeal rights have been exhausted, the
30 matter shall be transferred or remanded back to the trial court in which the
31 action originated for resolution of any outstanding matters."

32 **SECTION 7.(d)** G.S. 1A-1, Rule 62, reads as rewritten:

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

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

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

1 section, and no execution shall issue nor shall proceedings be taken for enforcement of the
2 judgment until the expiration of that time.

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

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

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

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

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

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

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

39 **SECTION 7.(e)** G.S. 7A-27 reads as rewritten:

40 **"§ 7A-27. Appeals of right from the courts of the trial divisions.**

41 ...

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

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

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

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

18 **SECTION 7.(f)** G.S. 105-241.17 reads as rewritten:

19 **"§ 105-241.17. Civil action challenging statute as unconstitutional.**

20 A taxpayer who claims that a tax statute is unconstitutional may bring a civil action in the
 21 Superior Court of Wake County to determine the taxpayer's liability under that statute if all of
 22 the conditions in this section are met. In filing an action under this section, a taxpayer must
 23 follow the procedures ~~for a mandatory business case set forth in G.S. 7A-45.4(b) through (f).~~
 24 set forth in G.S. 1-267.1. The conditions for filing a civil action are:

- 25 (1) The taxpayer exhausted the prehearing remedy by receiving a final
 26 determination after a review and a conference.
 27 (2) The taxpayer commenced a contested case at the Office of Administrative
 28 Hearings.
 29 (3) The Office of Administrative Hearings dismissed the contested case petition
 30 for lack of jurisdiction because the sole issue is the constitutionality of a
 31 statute and not the application of a statute.
 32 (4) The taxpayer has paid the amount of tax, penalties, and interest the final
 33 determination states is due.
 34 (5) The civil action is filed within two years of the dismissal."

35 **SECTION 8.** Section 1 applies to actions designated as mandatory complex
 36 business cases on or after October 1, 2014. Sections 3 and 4 apply to actions commenced or
 37 petitions files on or after October 1, 2014. Section 6 becomes effective August 1, 2014. Section
 38 7 becomes effective on July 1, 2014, and applies to any claim filed on or after that date,
 39 whether alleged in any filed action or raised as a defense or claim during proceedings on any
 40 action, that asserts that an act of the General Assembly is either facially invalid or invalid as
 41 applied to a set of factual circumstances, based upon the North Carolina or United States
 42 Constitutions. Unless otherwise provided by this act, the remainder of this act is effective when
 43 it becomes law.