A BILL TO BE ENTITLED
AN ACT TO CREATE TRANSPARENCY IN CONTRACTS BETWEEN THE ATTORNEY GENERAL AND PRIVATE ATTORNEYS, TO PREVENT THE ABUSE OF PATENTS, TO ALLOW FOR SHAREHOLDER ASSENT TO EXCLUSIVE FORUM, AND 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.

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.

"§ 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.

(5) State agency. – Every agency, institution, department, bureau, board, or commission of the State of North Carolina authorized by law to retain private counsel.
"§ 114-9.4. Procurement.

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

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

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

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

"§ 114-9.5. Contingency fees.

(a) The Attorney General may not give permission under G.S. 114-2.3 for a State agency to enter into a contingency fee contract that provides for the private attorney to receive a contingency fee, exclusive of reasonable costs and expenses, in excess of twenty-two and one-half percent (22.5%).

(b) In its discretion, the court may reduce the private attorney's fee after the State agency has reached a settlement or obtained an award.

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


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

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

"§ 114-9.7. Oversight.

(a) Until the conclusion of the legal proceeding or other matter for which the services of the private attorney have been retained, the executed contingency fee contract and the Attorney General's written determination pursuant to G.S. 114-9.4 shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes. All records maintained under this subsection shall be made available to the State Auditor for oversight purposes, upon request.
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(b) The amount of any payment of contingency fees pursuant to a contingency fee contract subject to this Article shall be posted on the Attorney General's Web site within 15 days after the payment of those contingency fees to the private attorney and shall remain posted on the Web site for at least 365 days thereafter.

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

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

1. Identify each new contingency fee contract entered into during the year and each previously executed contingency fee contract that remains current during any part of the year.
2. Include the name of the private attorney with whom the department has contracted in each instance, including the name of the attorney's law firm.
3. Describe the nature and status of the legal matter that is the subject of each contract.
4. Provide the name of the parties to each legal matter.
5. Disclose the amount of recovery.
6. Disclose the amount of any contingency fee paid.
7. Include copies of any written determinations made under G.S. 114-9.4.

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

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

§ 114-2.3. Use of private counsel limited.

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

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

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

PART IV. PREVENT THE ABUSE OF PATENTS

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

"Article 8.

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

§ 75-137. Purpose.
(a) The General Assembly finds the following:
(1) North Carolina is home to a growing high-technology, knowledge-based economy. With its top-tier research universities and active technology sector, North Carolina is poised to continue its growth. To continue growing, North Carolina must attract new, small, and mid-sized technology companies. Doing so will help provide jobs for North Carolina's residents and boost North Carolina's economy. North Carolina also is home to companies in retail, manufacturing, and other industries, many of whom are customers of technology companies. Those other businesses are more likely to succeed if not inhibited by abusive and bad-faith demands and litigation.
(2) Patents encourage research, development, and innovation. Patent holders have legitimate rights to enforce their patents.
(3) The General Assembly does not wish to interfere with good-faith patent litigation or the good-faith enforcement of patents. The General Assembly also recognizes that North Carolina is preempted from passing any law that conflicts with federal patent law.
(4) Patent litigation can be technical, complex, and expensive. The expense of patent litigation, which may cost millions of dollars, can be a significant burden on companies. North Carolina wishes to help its businesses avoid these costs by encouraging the most efficient resolution of patent infringement claims without conflicting with federal law.
(5) In order for North Carolina companies to be able to respond promptly and efficiently to patent infringement assertions against them, it is necessary that they receive specific information regarding how their product, service, or technology may have infringed the patent at issue. Receiving this information at an early stage will facilitate the resolution of claims and lessen the burden of potential litigation on North Carolina companies.
(6) Abusive patent litigation, and especially the assertion of bad-faith infringement claims, can harm North Carolina companies. A business that receives a letter asserting such claims faces the threat of expensive and protracted litigation and may feel that it has no choice but to settle and to pay a licensing fee even if the claim is meritless. This is especially so for small- and medium-sized companies and nonprofits that lack the resources to investigate and defend themselves against infringement claims.
(7) Not only do bad-faith patent infringement claims impose a significant burden on individual North Carolina businesses, they also undermine North Carolina's efforts to attract and nurture technology and other companies. Funds used to avoid the threat of bad-faith litigation are no longer available to invest, produce new products, expand, or hire new workers, thereby harming North Carolina's economy.
(8) North Carolina has a strong interest in patent matters involving its citizens and its businesses, including protecting its citizens and businesses against abusive patent assertions and ensuring North Carolina companies are not subjected to abusive patent assertion by entities acting in bad faith.
(9) In lawsuits involving abusive patent assertions, an accused infringer prevailing on the merits may be awarded costs and, less frequently, fees. These awards do not serve as a deterrent to abusive patent assertion entities
who have limited liability, as these companies may hold no cash or other
assets. North Carolina has a strong interest in making sure that prevailing
North Carolina companies sued by abusive patent assertions entities can
recover what is awarded to them.

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

§ 75-138. Definitions.
The following definitions apply in this Article:

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

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


(4) Interested party. – A person, other than the party alleging infringement, that
(i) is an assignee of the patent or patents at issue; (ii) has a right, including a
contingent right, to enforce or sublicense the patent or patents at issue; or
(iii) has a direct financial interest in the patent or patents at issue, including
the right to any part of an award of damages or any part of licensing revenue.
A "direct financial interest" does not include either of the following:

a. An attorney or law firm providing legal representation in the civil
action alleging patent infringement if the sole basis for the financial
interest of the attorney or law firm in the patent or patents at issue
arises from the attorney or law firm's receipt of compensation
reasonably related to the provision of the legal representation.

b. A person whose sole financial interest in the patent or patents at issue
is ownership of an equity interest in the party alleging infringement,
unless such person also has the right or ability to influence, direct, or
control the civil action.

(5) Operating entity. – A person primarily engaged in, when evaluated with its
affiliates over the preceding 24-month period and when disregarding the
selling and licensing of patents, one or more of the following activities:

a. Research and technical or experimental work to create, test, qualify,
modify, or validate technologies or processes for commercialization
of goods or services;

b. Manufacturing; or

c. The provision of goods or commercial services.

(6) Target. – A North Carolina person that meets one or more of the following:

a. The person has received a demand or is the subject of an assertion or
allegation of patent infringement.

b. The person has been threatened with litigation or is the defendant of
a filed lawsuit alleging patent infringement.

c. The person has customers who have received a demand asserting that
the person's product, service, or technology has infringed a patent.

§ 75-139. Abusive patent assertions.
(a) It is unlawful for a person to make a bad-faith assertion of patent infringement. A court may consider the following factors as evidence that a person has made a bad-faith assertion of patent infringement:

(1) The demand does not contain all of the following information:
   a. The patent application number or patent number.
   b. The name and address of the patent owner or owners and assignee or assignees, if any.
   c. Factual allegations concerning the specific areas in which the target's products, services, and technology infringe the patent or are covered by specific, identified claims in the patent.
   d. An explanation of why the person making the assertion has standing, if the United States Patent and Trademark Office's assignment system does not identify the person asserting the patent as the owner.

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

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

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

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

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

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

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

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

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

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

(12) Any other factor the court finds relevant.
(b) A court may consider the following factors as evidence that a person has not made a bad-faith assertion of patent infringement:

1. The demand contains the information described in subdivision (1) of subsection (a) of this section.
2. Where the demand lacks the information described in subdivision (1) of subsection (a) of this section and the target requests the information, the person provides the information within a reasonable period of time.
3. The person engages in a good-faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy.
4. The person makes a substantial investment in the use of the patent or in the production or sale of a product or item that the person reasonably believes is covered by the patent. "Use of the patent" in the preceding sentence means actual practice of the patent and does not include licensing without actual practice.
5. The person is either (i) the inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee or (ii) an institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education.
6. The person has demonstrated good-faith business practices in previous efforts to enforce the patent, or a substantially similar patent, or has successfully enforced the patent, or a substantially similar patent, through litigation.
7. Any other factor the court finds relevant.

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

1. A demand letter or assertion of patent infringement arising under any of the following:
   a. 7 U.S.C. § 136 et seq.
   b. 7 U.S.C. § 2321 et seq.
   c. 21 U.S.C. § 301 et seq.
   d. 35 U.S.C. § 161 et seq.
   e. 35 U.S.C. § 271(e)(2).
2. A demand letter or assertion of patent infringement by or on behalf of (i) an institution of higher education incorporated under the laws of and with its principal offices in North Carolina or (ii) a technology transfer organization owned by or affiliated with the institution of higher education.
3. A demand letter or assertion of patent infringement by or on behalf of a nonprofit research organization recognized as exempt from federal income tax under 26 U.S.C. § 501(c)(3) incorporated under the laws of and with its principal offices in North Carolina, or a technology transfer organization owned by or affiliated with the organization.
4. A demand letter or assertion of patent infringement made by an operating entity or its affiliate.

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

1. Advise others of that ownership or right of license or enforcement.
2. Communicate to others that the patent is available for license or sale.
3. Notify another of the infringement of the patent.
"§ 75-140. Bond.

(a) Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a person has made a bad-faith assertion of patent infringement in violation of this Chapter, the court shall require the person to post a bond in an amount equal to a good-faith estimate of the target's fees and costs to litigate the claim and amounts reasonably likely to be recovered under G.S. 75-141, conditioned upon payment of any amounts finally determined to be due to the target. A hearing shall be held if either party so requests. A bond ordered pursuant to this section shall not exceed five hundred thousand dollars ($500,000).

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

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

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

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

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

(1) Equitable relief.

(2) Damages.

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

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

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

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

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

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

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

SECTION 4.2. Section 4.1 of this act is effective when it becomes law and applies to causes of actions commenced on or after that date and demands made on or after that date.

PART V. SHAREHOLDER ASSENT TO EXCLUSIVE FORUM

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

§ 55-7-50. Shareholder assent to exclusive forum.

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

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

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

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

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

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

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

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

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

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

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

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

for Certain Challenges to State Laws.

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

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

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

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

(b1) Any challenge to the validity of an act of the General Assembly on its face filed in the Superior Court of Wake County, other than a challenge to plans apportioning or redistricting State legislative or congressional districts that shall be heard pursuant to subsection (b) of this section, or any claim transferred to the Superior Court of Wake County pursuant to subsection (a1) of this section, shall be assigned by the senior resident Superior Court Judge of Wake County to the three-judge panel established pursuant to subsection (b2) of this section.
(b2) The Chief Justice of the Supreme Court shall appoint three resident superior court judges to a three-judge panel of the Superior Court of Wake County to hear and determine challenges to the validity of statutes and acts pursuant to subsection (a1) of this section. The initial judges appointed to the panel shall remain as a standing three-judge panel to hear any action transferred to the panel for determination pursuant to this section, and the Chief Justice shall appoint a presiding judge of the three-judge panel. To ensure that members of the three-judge panel are drawn from different regions of the State, the Chief Justice shall appoint to the three-judge panel one resident superior court judge from the First or Second Judicial Division, one resident superior court judge from the Seventh or Eighth Judicial Division, and one resident superior court judge from the Third, Fourth, Fifth, or Sixth Division. Should any member of the three-judge panel be disqualified or otherwise unable to serve on the three-judge panel or is removed from the panel at the discretion of the Chief Justice, the Chief Justice shall appoint as a replacement another resident superior court judge from the same group of judicial divisions as the resident superior court judge being replaced.

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

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

SECTION 7.2. G.S. 1-81.1 reads as rewritten:
"§ 1-81.1. Venue in apportionment or redistricting cases; certain injunctive relief actions.
(a) Venue lies exclusively with the Wake County Superior Court in any action concerning any act of the General Assembly apportioning or redistricting State legislative or congressional districts lies exclusively with the Wake County Superior Court districts.

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

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

SECTION 7.3. G.S. 1A-1, Rule 42, reads as rewritten:
"Rule 42. Consolidation; separate trials.
(a) Consolidation. – Except as provided in subdivision (b)(2) of this section, when actions involving a common question of law or fact are pending in one division of the court, the judge may order a joint hearing or trial of any or all the matters in issue in the actions; he may order all the actions consolidated; and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. When actions involving a common
question of law or fact are pending in both the superior and the district court of the same county, a judge of the superior court in which the action is pending may order all the actions consolidated, and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. –

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

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

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

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

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

(a) Automatic stay; exceptions – Injunctions and receiverships. – Except as otherwise stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of the time provided in the controlling statute or rule of appellate procedure for giving notice of appeal from the judgment. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of section (c) govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.
Stay on motion for new trial or for judgment. – In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b). If the time provided in the controlling statute or rule of appellate procedure for giving notice of appeal from the judgment had not expired before a stay under this subsection was entered, that time shall begin to run immediately upon the expiration of any stay under this section, and no execution shall issue nor shall proceedings be taken for enforcement of the judgment until the expiration of that time.

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

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

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

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

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

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

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

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

"§ 7A-27. Appeals of right from the courts of the trial divisions."
(a) Appeal lies of right directly to the Supreme Court in all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

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

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

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

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

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

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

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

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

PART VIII. SEVERABILITY AND EFFECTIVE DATE

SECTION 8.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 8.2. Except as otherwise provided, this act is effective when it becomes law.