

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL 853  
Judiciary I Committee Substitute Adopted 6/11/14  
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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  
35 Business Court. If there is more than one business court judge, the Chief Justice may designate



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

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

8 "**§ 7A-45.4. Designation of complex business cases.**

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

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

1                   c.     The amount in controversy computed in accordance with  
2                             G.S. 7A-243 is at least one million dollars (\$1,000,000).

3                   d.     All parties consent to the designation.

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

13           (1)     An action involving a material issue related to tax law that has been the  
14                     subject of a contested tax case for which judicial review is requested under  
15                     G.S. 105-241.16 shall be designated as a mandatory complex business case  
16                     by the petitioner.

17           (2)     An action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection  
18                     (a) of this section in which the amount in controversy computed in  
19                     accordance with G.S. 7A-243 is at least five million dollars (\$5,000,000)  
20                     shall be designated as a mandatory complex business case by the party  
21                     whose pleading caused the amount in controversy to equal or exceed five  
22                     million dollars (\$5,000,000).

23           (3)     An action involving regulation of pole attachments brought pursuant to  
24                     G.S. 62-350 shall be designated as a mandatory complex business case by  
25                     the plaintiff.

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

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

38           (1)     By the plaintiff, the third-party plaintiff, or the petitioner for judicial review  
39                     contemporaneously with the filing of the complaint, third-party complaint,  
40                     or the petition for judicial review in the action.

41           (2)     By any intervenor when the intervenor files a motion for permission to  
42                     intervene in the action.

43           (3)     By any defendant or any other party within 30 days of receipt of service of  
44                     the pleading seeking relief from the defendant or party.

45           (4)     By any party whose pleading caused the amount in controversy computed in  
46                     accordance with G.S. 7A-243 to equal or exceed five million dollars  
47                     (\$5,000,000) contemporaneously with the filing of that pleading.

48       (e)     Within 30 days after service of the Notice of Designation, any other party may, in  
49                     good faith, file and serve an opposition to the designation of the action as a mandatory complex  
50                     business case. The opposition to the designation of the action shall assert all grounds on which  
51                     the party opposing designation objects to the designation, and any grounds not asserted shall be

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

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

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

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

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

28 "**§ 7A-305. Costs in civil actions.**

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

31 ...

32 (2) For support of the General Court of Justice, the sum of one hundred eighty  
33 dollars (\$180.00) in the superior court and the sum of one hundred thirty  
34 dollars (\$130.00) in the district court except that if the case is assigned to a  
35 magistrate the sum shall be eighty dollars (\$80.00). If a case is assigned to a  
36 special superior court judge as a complex business case under G.S. 7A-45.3,  
37 upon assignment the party filing the notice of designation pursuant to  
38 G.S. 7A-45.4 or the motion for complex business designation shall pay an  
39 additional one thousand one hundred dollars ~~(\$1,000)~~ (\$1,100) for support of  
40 the General Court of Justice; if a case is assigned to a special superior court  
41 judge as a complex business case under G.S. 7A-45.3 by a court on its own  
42 motion, upon assignment the plaintiff shall pay an additional one thousand  
43 one hundred dollars ~~(\$1,000)~~ (\$1,100) for support of the General Court of  
44 Justice. Sums collected under this subdivision shall be remitted to the State  
45 Treasurer. The State Treasurer shall remit the sum of one dollar and fifty  
46 cents (\$1.50) of each fee collected under this subdivision to the North  
47 Carolina State Bar for the provision of services described in G.S. 7A-474.4,  
48 and ninety-five cents (\$.95) of each fee collected under this subdivision to  
49 the North Carolina State Bar for the provision of services described in  
50 G.S. 7A-474.19.

51 ...

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

4 ...

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

8 ...."

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

10 **"§ 7A-343. Duties of Director.**

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

13 ...

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

20 (8a) Prepare and submit a semiannual report on the activities of each North  
21 Carolina business court site to the Chief Justice and to each member of the  
22 General Assembly. The semiannual report required under this subdivision  
23 shall be separate from the report required under subdivision (8) of this  
24 section and shall include the total number of civil cases pending in each  
25 business court site over three years after being designated as a mandatory  
26 complex business case, motions pending over six months after being filed,  
27 and civil cases in which bench trials have been concluded for over six  
28 months without entry of judgment, including any accompanying explanation  
29 provided by the Business Court.

30 ...."

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

33 **"§ 55-11-11 Merger to effect a holding company reorganization.**

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

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

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

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

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

48 (5) "Organizational documents" means the articles of incorporation of a  
49 corporation or the articles of organization of a limited liability company.

50 (6) "Surviving entity" means the corporation incorporated under the laws of this  
51 State or limited liability company organized under the laws of this State that

1 is the surviving entity in a merger of a constituent corporation with or into a  
2 single direct or indirect wholly owned subsidiary of the constituent  
3 corporation, which immediately following the merger is a direct or indirect  
4 wholly owned subsidiary of the holding company.

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

9 (1) The constituent corporation and the direct or indirect wholly-owned  
10 subsidiary of the constituent corporation are the only constituent entities to  
11 the merger.

12 (2) Each share or fraction of a share of the capital stock of the constituent  
13 corporation outstanding immediately prior to the effective time of the merger  
14 is converted in the merger into a share or equal fraction of a share of capital  
15 stock of a holding company having the same designations, rights, powers  
16 and preferences, and the qualifications, limitations and restrictions thereof,  
17 as the share or fraction of a share of the capital stock of the constituent  
18 corporation being converted in the merger.

19 (3) The holding company and the constituent corporation are both corporations  
20 of this State and the direct or indirect wholly-owned subsidiary that is the  
21 other constituent entity to the merger is a corporation or limited liability  
22 company of this State.

23 (4) The articles of incorporation and bylaws of the holding company  
24 immediately following the effective time of the merger contain provisions  
25 identical to the articles of incorporation and bylaws of the constituent  
26 corporation immediately prior to the effective time of the merger other than  
27 provisions, if any, regarding any of the following:

28 a. The incorporator or incorporators.

29 b. The corporate name.

30 c. The registered office and agent.

31 d. The initial board of directors and the initial subscribers for shares.

32 e. Any provisions contained in any amendment to the articles of  
33 incorporation that were necessary to effect a change, exchange,  
34 reclassification, subdivision, combination, or cancellation of stock, if  
35 the change, exchange, reclassification, subdivision, combination, or  
36 cancellation has become effective.

37 (5) As a result of the merger the constituent corporation or its successor  
38 becomes or remains a direct or indirect wholly-owned subsidiary of the  
39 holding company.

40 (6) The directors of the constituent corporation become or remain the directors  
41 of the holding company upon the effective time of the merger.

42 (7) Except as provided in subsections (c) and (d) of this section, the  
43 organizational documents of the surviving entity immediately following the  
44 effective time of the merger contain provisions identical to the articles of  
45 incorporation of the constituent corporation immediately prior to the  
46 effective time of the merger other than provisions, if any, regarding any of  
47 the following:

48 a. The incorporator or incorporators.

49 b. The corporate or entity name.

50 c. The registered office and agent.

51 d. The initial board of directors and the initial subscribers for shares.

- 1           e.     References to members rather than stockholders or shareholders.  
2           f.     References to interests, units, or other similar terms rather than stock  
3                 or shares.  
4           g.     References to managers, managing members, or other members of  
5                 the governing body rather than directors.  
6           h.     Any provisions contained in any amendment to the articles of  
7                 incorporation that were necessary to effect a change, exchange,  
8                 reclassification, subdivision, combination, or cancellation of stock, if  
9                 the change, exchange, reclassification, subdivision, combination, or  
10                cancellation has become effective.  
11         (8)    The shareholders of the constituent corporation do not recognize gain or loss  
12                for United States federal income tax purposes as determined by the board of  
13                directors of the constituent corporation.  
14         (c)    Notwithstanding the provisions of subdivision (7) of subsection (b) of this section, if  
15         the organizational documents of the surviving entity do not contain the following provisions,  
16         they shall be amended in the merger to contain provisions requiring all of the following:  
17             (1)   Any act or transaction by or involving the surviving entity, other than the  
18                 election or removal of directors or managers, managing members, or other  
19                 members of the governing body of the surviving entity, that requires for its  
20                 adoption under this Chapter or its organizational documents the approval of  
21                 the shareholders or members of the surviving entity shall, by specific  
22                 reference to this subsection, require, in addition, the approval of the  
23                 shareholders of the holding company (or any successor by merger), by the  
24                 same vote as is required by this Chapter or by the organizational documents  
25                 of the surviving entity. For purposes of this subdivision, any surviving entity  
26                 that is not a corporation shall include in the amendment a requirement that  
27                 the approval of the shareholders of the holding company be obtained for any  
28                 act or transaction by or involving the surviving entity, other than the election  
29                 or removal of directors or managers, managing members, or other members  
30                 of the governing body of the surviving entity, which would require the  
31                 approval of the shareholders of the surviving entity if the surviving entity  
32                 were a corporation subject to this Chapter.  
33             (2)   Any amendment of the organizational documents of a surviving entity that is  
34                 not a corporation that would, if adopted by a corporation subject to this  
35                 Chapter, be required to be included in the articles of incorporation of the  
36                 corporation shall, by specific reference to this subsection, require, in  
37                 addition, the approval of the shareholders of the holding company (or any  
38                 successor by merger), by the same vote as is required by this Chapter or by  
39                 the organizational documents of the surviving entity.  
40             (3)   The business and affairs of a surviving entity that is not a corporation shall  
41                 be managed by or under the direction of a board of directors, board of  
42                 managers, or other governing body consisting of individuals who are subject  
43                 to the same fiduciary duties applicable to, and who are liable for breach of  
44                 those duties to the same extent as, directors of a corporation subject to this  
45                 Chapter.  
46         (d)    Notwithstanding the provisions of subdivision (7) of subsection (b) of this section,  
47         the organizational documents of the surviving entity may be amended in the merger to reduce  
48         the number of classes and shares of capital stock or other equity interests or units that the  
49         surviving entity is authorized to issue and to eliminate any provision authorized by  
50         G.S. 55-8-06.

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

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

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

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

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

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

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

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

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

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

40 **"§ 55-11-06. Effect of merger or share exchange.**

41 (a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, or ~~55-11-09~~  
 42 ~~55-11-09~~, or 55-11-11 takes effect:

43 "...."

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

46 "Article 26A.

47 "Three-Judge Panel for Redistricting ~~Challenges.~~Challenges and  
 48 for Certain Challenges to State Laws.

49 **"§ 1-267.1. Three-judge panel for actions challenging plans apportioning or redistricting**  
 50 **State legislative or congressional ~~districts.~~districts; claims challenging the facial**  
 51 **validity of an act of the General Assembly.**



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

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

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

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

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

1 Justice shall appoint as a replacement another resident superior court judge from the same  
2 group of judicial divisions as the resident superior court judge being replaced.

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

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

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

14 "**§ 1-81.1. Venue in apportionment or redistricting ~~eases~~cases; certain injunctive relief**  
15 **actions.**

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

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

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

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

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

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

44 (b) Separate trials. –

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

50 (2) Upon motion of any party in an action that includes a claim commenced  
51 under Article 1G of Chapter 90 of the General Statutes involving a managed

1 care entity as defined in G.S. 90-21.50, the court shall order separate  
2 discovery and a separate trial of any claim, cross-claim, counterclaim, or  
3 third-party claim against a physician or other medical provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 **"§ 7A-27. Appeals of right from the courts of the trial divisions.**

39 ...

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

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

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

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

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

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

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

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

17 **"§ 105-241.17. Civil action challenging statute as unconstitutional.**

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

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

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