

# ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
House Bill 189

AMENDMENT NO. A1  
(to be filled in by  
Principal Clerk)

H189-ATG-89 [v.4]

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

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

Senator Barringer

1 moves to amend the bill on page 1, lines 4 through 6, by rewriting those lines to read:

2  
3 "UNDER THE LAWS PERTAINING TO CHILD SUPPORT, TO MAKE TECHNICAL  
4 CORRECTIONS TO THE UNIFORM DEPLOYED PARENTS CUSTODY AND  
5 VISITATION ACT, TO MODERNIZE THE BUSINESS COURT BY MAKING  
6 TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE  
7 PROCEDURES FOR COMPLEX BUSINESS CASES, TO STREAMLINE THE  
8 PROCESS OF CORPORATE REORGANIZATION UTILIZING HOLDING  
9 COMPANIES, TO ALLOW FOR SHAREHOLDER ASSENT TO EXCLUSIVE FORUM,  
10 AND TO CREATE A THREE-JUDGE PANEL TO RULE ON CLAIMS THAT AN ACT  
11 OF THE GENERAL ASSEMBLY IS FACIALLY INVALID BASED UPON THE  
12 NORTH CAROLINA OR UNITED STATES CONSTITUTIONS.";

13  
14 and on page 2, lines 38-39, by inserting the following between those lines:

15  
16 "SECTION 6.(a) G.S. 7A-27(a) reads as rewritten:

17 "§ 7A-27. Appeals of right from the courts of the trial divisions.

- 18 (a) Appeal lies of right directly to the Supreme Court in any of the following cases:  
19 (1) ~~all~~ All cases in which the defendant is convicted of murder in the first degree  
20 and the judgment of the superior court includes a sentence of death.  
21 (2) From any final judgment in a case designated as a mandatory complex  
22 business case pursuant to G.S. 7A-45.4 or designated as a discretionary  
23 complex business case pursuant to Rule 2.1 of the General Rules of Practice  
24 for the Superior and District Courts.  
25 (3) From any interlocutory order of a Business Court Judge which does any of  
26 the following:  
27 a. Affects a substantial right.  
28 b. In effect determines the action and prevents a judgment from which  
29 an appeal might be taken.  
30 c. Discontinues the action.  
31 d. Grants or refuses a new trial."



\* H 1 8 9 - A T G - 8 9 - V - 4 \*

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1           **SECTION 6.(b)** Appeals pursuant to G.S. 7A-27(a)(2) and G.S. 7A-27(a)(3) shall  
2 be taken in accordance with the North Carolina Rules of Appellate Procedure applicable to civil  
3 cases.

4           **SECTION 7.** G.S. 7A-45.3 reads as rewritten:

5       "**§ 7A-45.3. Superior court judges designated for complex business cases.**

6       The Chief Justice may exercise the authority under rules of practice prescribed pursuant to  
7 G.S. 7A-34 to designate one or more of the special superior court judges authorized by  
8 G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice.  
9 Any judge so designated shall be known as a Business Court Judge and shall preside in the  
10 Business Court. If there is more than one business court judge, the Chief Justice may designate  
11 one of them as the Senior Business Court Judge. If there is no designation by the Chief Justice,  
12 the judge with the longest term of service on the court shall serve as Senior Business Court  
13 Judge until the Chief Justice makes an appointment to the position. The presiding Business  
14 Court Judge shall issue a written opinion in connection with any order granting or denying a  
15 motion under G.S. 1A-1, Rule 12, 56, 59, or 60 or any order finally disposing of a complex  
16 business case."

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

18       "**§ 7A-45.4. Designation of complex business cases.**

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

- 22       (1) ~~The law governing corporations, except charitable and religious~~  
23 ~~organizations qualified under G.S. 55A-1-40(4) on the grounds of religious~~  
24 ~~purpose, partnerships, limited liability companies, and limited liability~~  
25 ~~partnerships, including issues concerning governance, involuntary~~  
26 ~~dissolution of a corporation, mergers and acquisitions, breach of duty of~~  
27 ~~directors, election or removal of directors, enforcement or interpretation of~~  
28 ~~shareholder agreements, and derivative actions.~~ Disputes involving the law  
29 governing corporations, except charitable and religious organizations  
30 qualified under G.S. 55A-1-40(4) on the grounds of religious purpose,  
31 partnerships, and limited liability companies, including disputes arising  
32 under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.
- 33       (2) ~~Securities law, including proxy disputes and tender offer disputes.~~ Disputes  
34 involving securities, including disputes arising under Chapter 78A of the  
35 General Statutes.
- 36       (3) ~~Antitrust law, except claims based solely on unfair competition under~~  
37 ~~G.S. 75-1.1.~~ Disputes involving antitrust or unfair competition law, including  
38 disputes arising under Chapter 75 of the General Statutes, that do not arise  
39 solely under G.S. 75-1.1 or Article 2 of Chapter 75 of the General Statutes.
- 40       (4) ~~State trademark or unfair competition law, except claims based solely on~~  
41 ~~unfair competition under G.S. 75-1.1.~~ Disputes involving trademark law,  
42 including disputes arising under Chapter 80 of the General Statutes.

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- 1           (5) ~~Intellectual property law, including software licensing disputes.~~Disputes  
2 involving the ownership, use, licensing, lease, installation, or performance of  
3 intellectual property, including computer software, software applications,  
4 information technology and systems, data and data security,  
5 pharmaceuticals, biotechnology products, and bioscience technologies.  
6           (6) ~~The Internet, electronic commerce, and biotechnology.~~  
7           (7) ~~Tax law, when the dispute has been the subject of a contested tax case for~~  
8 ~~which judicial review is requested under G.S. 105-241.16 or the dispute is a~~  
9 ~~civil action under G.S. 105-241.17.~~  
10          (8) Disputes involving trade secrets, including disputes arising under Article 24  
11 of Chapter 66 of the General Statutes, except for disputes involving  
12 enforcement of a non-competition or non-solicitation covenant against an  
13 individual employee.  
14          (9) Contract disputes in which all of the following conditions are met:  
15           a. At least one plaintiff and at least one defendant is an entity  
16 authorized to transact business in North Carolina under Chapter 55,  
17 55A, 55B, 57D, or 59 of the General Statutes.  
18           b. The complaint asserts a claim for breach of contract or seeks a  
19 declaration of rights, status, or other legal relations under a contract.  
20           c. The amount in controversy computed in accordance with  
21 G.S. 7A-243 is at least one million dollars (\$1,000,000).  
22           d. All parties consent to the designation.  
23          (b) ~~Any party may designate a civil action or a petition for judicial review under~~  
24 ~~G.S. 105-241.16 as a mandatory complex business case by filing a Notice of Designation in the~~  
25 ~~Superior Court in which the action has been filed and simultaneously serving the notice on each~~  
26 ~~opposing party or counsel and on the Special Superior Court Judge for Complex Business~~  
27 ~~Cases who is then the senior Business Court Judge. A copy of the notice shall also be sent~~  
28 ~~contemporaneously by e-mail or facsimile transmission to the Chief Justice of the Supreme~~  
29 ~~Court for approval of the designation of the action as a mandatory complex business case and~~  
30 ~~assignment to a specific Business Court Judge.~~The following actions shall be designated as  
31 mandatory complex business cases:  
32           (1) An action involving a material issue related to tax law that has been the  
33 subject of a contested tax case for which judicial review is requested under  
34 G.S. 105-241.16, or a civil action under G.S. 105-241.17 containing a  
35 constitutional challenge to a tax statute as applied to the plaintiff, shall be  
36 designated as a mandatory complex business case by the petitioner or  
37 plaintiff.  
38           (2) An action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection  
39 (a) of this section in which the amount in controversy computed in  
40 accordance with G.S. 7A-243 is at least five million dollars (\$5,000,000)  
41 shall be designated as a mandatory complex business case by the party  
42 whose pleading caused the amount in controversy to equal or exceed five  
43 million dollars (\$5,000,000).

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

4 (c) A party designating an action as a mandatory complex business case shall file a  
5 Notice of Designation in the Superior Court in which the action has been filed, shall  
6 contemporaneously serve the notice on each opposing party or counsel and on the Special  
7 Superior Court Judge for Complex Business Cases who is then the senior Business Court  
8 Judge, and shall contemporaneously send a copy of the notice by e-mail to the Chief Justice of  
9 the Supreme Court for approval of the designation of the action as a mandatory complex  
10 business case and assignment to a specific Business Court Judge. The Notice of Designation  
11 shall, in good faith and based on information reasonably available, succinctly state the basis of  
12 the designation and include a certificate by or on behalf of the designating party that the civil  
13 action meets the criteria for designation as a mandatory complex business case pursuant to  
14 subsection (a) or (b) of this section.

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

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

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

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

23 (4) By any party whose pleading caused the amount in controversy computed in  
24 accordance with G.S. 7A-243 to equal or exceed five million dollars  
25 (\$5,000,000) contemporaneously with the filing of that pleading.

26 (e) Within 30 days after service of the Notice of Designation, any other party may, in  
27 good faith, file and serve an opposition to the designation of the action as a mandatory complex  
28 business case. The opposition to the designation of the action shall assert all grounds on which  
29 the party opposing designation objects to the designation, and any grounds not asserted shall be  
30 deemed conclusively waived. Within 30 days after the entry of an order staying a pending  
31 action pursuant to subsection (g) of this section, any party opposing the stay shall file an  
32 objection with the Business Court asserting all grounds on which the party objects to the case  
33 proceeding in the Business Court, and any grounds not asserted shall be deemed conclusively  
34 waived. Based on the opposition or ~~ex mero motu~~, on its own motion, the Business Court Judge  
35 ~~may~~ shall rule by written order on the opposition or objection and determine ~~that~~ whether the  
36 action should ~~not~~ be designated as a mandatory complex business case. If a party disagrees with  
37 the decision, the party may appeal to the Chief Justice of the Supreme Court in accordance with  
38 G.S. 7A-27(a).

39 (f) Once a designation is filed under subsection (d) of this section, and after preliminary  
40 approval by the Chief Justice, a case shall be designated and administered a complex business  
41 case. All proceedings in the action shall be before the Business Court Judge to whom it has  
42 been assigned unless and until an order has been entered under subsection (e) of this section  
43 ordering that the case not be designated a mandatory complex business case or the Chief Justice

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1 revokes approval. If complex business case status is revoked or denied, the action shall be  
2 treated as any other civil action, unless it is designated as an exceptional civil case or a  
3 discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for  
4 the Superior and District Courts.

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

11 (h) Nothing in this section shall be construed to confer, enlarge or diminish the subject  
12 matter jurisdiction of any court."

13 **SECTION 8.(b)** Nothing in this section is intended to permit actions for personal  
14 injury grounded in tort to be designated as mandatory complex business cases.

15 **SECTION 9.** G.S. 7A-305 reads as rewritten:

16 "**§ 7A-305. Costs in civil actions.**

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

19 ...

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

39 ...

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

43 ...

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

...."

**SECTION 10.** G.S. 7A-343 reads as rewritten:

**"§ 7A-343. Duties of Director.**

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

...

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

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

...."

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

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

(a) The following definitions apply in this section:

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

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

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

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

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

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

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

13 (1) The constituent corporation and the direct or indirect wholly-owned  
14 subsidiary of the constituent corporation are the only constituent entities to  
15 the merger.

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

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

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

32 a. The incorporator or incorporators.

33 b. The corporate name.

34 c. The registered office and agent.

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

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

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

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



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1 approval of the shareholders of the surviving entity if the surviving entity  
2 were a corporation subject to this Chapter.

3 (2) Any amendment of the organizational documents of a surviving entity that is  
4 not a corporation that would, if adopted by a corporation subject to this  
5 Chapter, be required to be included in the articles of incorporation of the  
6 corporation shall, by specific reference to this subsection, require, in  
7 addition, the approval of the shareholders of the holding company (or any  
8 successor by merger), by the same vote as is required by this Chapter or by  
9 the organizational documents of the surviving entity.

10 (3) The business and affairs of a surviving entity that is not a corporation shall  
11 be managed by or under the direction of a board of directors, board of  
12 managers, or other governing body consisting of individuals who are subject  
13 to the same fiduciary duties applicable to, and who are liable for breach of  
14 those duties to the same extent as, directors of a corporation subject to this  
15 Chapter.

16 (d) Notwithstanding the provisions of subdivision (7) of subsection (b) of this section,  
17 the organizational documents of the surviving entity may be amended in the merger to reduce  
18 the number of classes and shares of capital stock or other equity interests or units that the  
19 surviving entity is authorized to issue and to eliminate any provision authorized by  
20 G.S. 55-8-06.

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

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

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

33 (2) If the corporate name of the holding company immediately following the  
34 effective time of the merger is the same as the corporate name of the  
35 constituent corporation immediately prior to the effective time of the merger,  
36 the shares of capital stock of the holding company into which the shares of  
37 capital stock of the constituent corporation are converted in the merger shall  
38 be represented by the stock certificates that previously represented shares of  
39 capital stock of the constituent corporation.

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



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1 appoint two additional resident superior court judges to the three-judge panel of the Superior  
2 Court of Wake County to hear and determine the action. Before making those appointments,  
3 the Chief Justice shall consult with the North Carolina Conference of Superior Court Judges,  
4 which shall provide the Chief Justice with a list of recommended appointments. To ensure that  
5 members of the three-judge panel are drawn from different regions of the State, the Chief  
6 Justice shall appoint to the three-judge panel one resident superior court judge from the First  
7 through Fourth Judicial Divisions and one resident superior court judge from the Fifth through  
8 Eighth Judicial Divisions. In order to ensure fairness, to avoid the appearance of impropriety,  
9 and to avoid political bias, no member of the panel, including the senior resident superior court  
10 judge of Wake County, may be a former member of the General Assembly. Should the senior  
11 resident superior court judge of Wake County be disqualified or otherwise unable to serve on  
12 the three-judge panel, the Chief Justice shall appoint another resident superior court judge of  
13 Wake County as the presiding judge of the three-judge panel. Should any other member of the  
14 three-judge panel be disqualified or otherwise unable to serve on the three-judge panel, the  
15 Chief Justice shall appoint as a replacement another resident superior court judge from the  
16 same group of judicial divisions as the resident superior court judge being replaced.

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

24 (b2) The Chief Justice of the Supreme Court shall appoint three resident superior court  
25 judges to a three-judge panel of the Superior Court of Wake County to hear and determine  
26 challenges to the validity of statutes and acts pursuant to subsection (a1) of this section. The  
27 initial judges appointed to the panel shall remain as a standing three-judge panel to hear any  
28 action transferred to the panel for determination pursuant to this section, and the Chief Justice  
29 shall appoint a presiding judge of the three-judge panel. To ensure that members of the  
30 three-judge panel are drawn from different regions of the State, the Chief Justice shall appoint  
31 to the three-judge panel one resident superior court judge from the First or Second Judicial  
32 Division, one resident superior court judge from the Seventh or Eighth Judicial Division, and  
33 one resident superior court judge from the Third, Fourth, Fifth, or Sixth Judicial Division.  
34 Should any member of the three-judge panel be disqualified or otherwise unable to serve on the  
35 three-judge panel or is removed from the panel at the discretion of the Chief Justice, the Chief  
36 Justice shall appoint as a replacement another resident superior court judge from the same  
37 group of judicial divisions as the resident superior court judge being replaced.

38 (c) No order or judgment shall be entered affecting the validity of any act of the  
39 General Assembly that apportions or redistricts State legislative or congressional districts  
40 districts, or finds that an act of the General Assembly is facially invalid based upon the North  
41 Carolina or United States Constitutions, except by the three-judge panel of the Superior Court  
42 of Wake County organized as provided by subsection (b) or subsection (b1) of this section. In

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1 the event of disagreement among the three resident superior court judges comprising the  
2 three-judge panel, then the opinion of the majority shall prevail.

3 (d) This section applies only to civil proceedings, and nothing in this section shall be  
4 deemed to apply to a defendant in criminal proceedings or to proceedings in which Chapter  
5 15A of the General Statutes is applicable."

6 **SECTION 12.(b)** G.S. 1-81.1 reads as rewritten:

7 "**§ 1-81.1. Venue in apportionment or redistricting ~~eases-cases; certain injunctive relief~~**  
8 **actions.**

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

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

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

26 **SECTION 12.(c)** G.S. 1A-1, Rule 42, reads as rewritten:

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

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

37 (b) Separate trials. –

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

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

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

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

32 **SECTION 12.(d)** G.S. 1A-1, Rule 62, reads as rewritten:

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

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

42 (b) Stay on motion for new trial or for judgment. – In its discretion and on such  
43 conditions for the security of the adverse party as are proper, the court may stay the execution

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1 of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial  
2 or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a  
3 judgment or order made pursuant to Rule 60, or of a motion for judgment made pursuant to  
4 Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant  
5 to Rule 52(b). If the time provided in the controlling statute or rule of appellate procedure for  
6 giving notice of appeal from the judgment had not expired before a stay under this subsection  
7 was entered, that time shall begin to run immediately upon the expiration of any stay under this  
8 section, and no execution shall issue nor shall proceedings be taken for enforcement of the  
9 judgment until the expiration of that time.

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

15 (d) Stay upon appeal. – When an appeal is taken, the appellant may obtain a stay of  
16 execution, subject to the exceptions contained in section (a), by proceeding in accordance with  
17 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,  
18 G.S. 1-294, and G.S. 1-295.

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

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

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

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

38 (h) Injunction pending appeal of as-applied constitutional challenge. – Notwithstanding  
39 any other provision of law where a trial court grants interlocutory, temporary, or permanent  
40 injunctive or declaratory relief restraining the State or a political subdivision of the State from  
41 enforcing the operation or execution of an act of the General Assembly as applied against a  
42 party in a civil action, the court shall stay the relief granted pending appeal. This subsection  
43 only applies where the State or a political subdivision of the State is a party in the civil action.

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1 This subsection does not apply to facial challenges heard by a three-judge panel pursuant to  
2 G.S. 1-267.1."

3 SECTION 12.(e) G.S. 7A-27 reads as rewritten:

4 "§ 7A-27. Appeals of right from the courts of the trial divisions.

5 ...

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

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

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

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

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

18 a. Affects a substantial right.

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

21 c. Discontinues the action.

22 d. Grants or refuses a new trial.

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

24 f. Grants temporary injunctive relief restraining the State or a political  
25 subdivision of the State from enforcing the operation or execution of  
26 an act of the General Assembly as applied against a party in a civil  
27 action. This subsection only applies where the State or a political  
28 subdivision of the State is a party in the civil action. This subsection  
29 does not apply to facial challenges heard by a three-judge panel  
30 pursuant to G.S. 1-267.1.

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

33 SECTION 12.(f) G.S. 105-241.17 reads as rewritten:

34 "§ 105-241.17. Civil action challenging statute as unconstitutional.

35 A taxpayer who claims that a tax statute is unconstitutional may bring a civil action in the  
36 Superior Court of Wake County to determine the taxpayer's liability under that statute if all of  
37 the conditions in this section are met. In filing an action under this section, a taxpayer must  
38 follow the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f).  
39 (f), except for any claim that the tax statute is unconstitutional on its face, which shall be  
40 subject to the procedures set forth in G.S. 1-267.1. The conditions for filing a civil action are:

41 (1) The taxpayer exhausted the prehearing remedy by receiving a final  
42 determination after a review and a conference.

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- 1           (2)    The taxpayer commenced a contested case at the Office of Administrative
- 2                    Hearings.
- 3           (3)    The Office of Administrative Hearings dismissed the contested case petition
- 4                    for lack of jurisdiction because the sole issue is the constitutionality of a
- 5                    statute and not the application of a statute.
- 6           (4)    The taxpayer has paid the amount of tax, penalties, and interest the final
- 7                    determination states is due.
- 8           (5)    The civil action is filed within two years of the dismissal."

9           **SECTION 13.** Article 7 of Chapter 55 of the General Statutes is amended by  
10 adding a new section to read:

11 **"§ 55-7-50. Shareholder assent to exclusive forum.**

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

18  
19 and on page 2, lines 39-41, by rewriting those lines to read:

20  
21           **"SECTION 14.** Section 1 of this act becomes effective January 1, 2015, and  
22 applies to orders entered on or after that date. Section 6 of this act applies to actions designated  
23 as mandatory complex business cases on or after October 1, 2014. Sections 8 and 9 of this act  
24 apply to actions commenced or petitions files on or after October 1, 2014. Section 6 becomes  
25 effective August 1, 2014. Section 12 of this act becomes effective on July 1, 2014, and applies  
26 to any claim filed on or after that date, whether alleged in any filed action or raised as a defense  
27 or claim during proceedings on any action, that asserts that an act of the General Assembly is  
28 either facially invalid or invalid as applied to a set of factual circumstances, based upon the  
29 North Carolina or United States Constitutions. Section 13 of this act is effective when it  
30 becomes law and applies to all articles of incorporation and all amendments to articles of  
31 incorporation adopted on or after that date. Unless otherwise provided by this act, the  
32 remainder of this act is effective when it becomes law."

33  
34  
35  
36  
37



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

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

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

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