

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 648
Commerce Committee Substitute Adopted 5/7/13
PROPOSED COMMITTEE SUBSTITUTE S648-PCS15443-TG-78

Short Title: NC Commerce Protection Act of 2014.

(Public)

Sponsors:

Referred to:

April 4, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE TRANSPARENCY IN CONTRACTS BETWEEN THE ATTORNEY
3 GENERAL AND PRIVATE ATTORNEYS, TO PREVENT THE ABUSE OF PATENTS,
4 TO ALLOW FOR SHAREHOLDER ASSENT TO EXCLUSIVE FORUM, AND TO
5 CREATE A THREE-JUDGE PANEL TO RULE ON CLAIMS THAT AN ACT OF THE
6 GENERAL ASSEMBLY IS FACIALLY INVALID BASED UPON THE NORTH
7 CAROLINA OR UNITED STATES CONSTITUTIONS.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. CREATE TRANSPARENCY IN CONTRACTS BETWEEN THE ATTORNEY**
11 **GENERAL AND PRIVATE ATTORNEYS**

12 **SECTION 1.1.** Chapter 114 of the General Statutes is amended by adding a new
13 Article to read:

14 "Article 2A.

15 "Transparency in Third-Party Contracting by Attorney General.

16 **"§ 114-9.2. Title.**

17 This Article shall be known and may be cited as the "Transparency in Private Attorney
18 Contracts Act (TIPAC)."

19 **"§ 114-9.3. Definitions.**

20 The following definitions apply in this Article:

- 21 (1) Contingency fee contract. – A contract entered into by a State agency to
22 retain private counsel that contains a contingency fee arrangement,
23 including, but not limited to, pure contingency fee agreements and hybrid
24 agreements, including a contingency fee aspect.
- 25 (2) Government attorney. – An attorney employed by the State as a staff
26 attorney in a State agency.
- 27 (3) Private attorney. – An attorney in private practice or employed by a private
28 law firm.
- 29 (4) State. – The State of North Carolina, including State officers, departments,
30 boards, commissions, divisions, bureaus, councils, and units of organization,
31 however designated, of the executive branch of State government and any of
32 its agents.
- 33 (5) State agency. – Every agency, institution, department, bureau, board, or
34 commission of the State of North Carolina authorized by law to retain
35 private counsel.



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"§ 114-9.4. Procurement.

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

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

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

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

"§ 114-9.5. Contingency fees.

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

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

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

"§ 114-9.6. Control.

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

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

"§ 114-9.7. Oversight.

(a) Until the conclusion of the legal proceeding or other matter for which the services of the private attorney have been retained, the executed contingency fee contract and the Attorney General's written determination pursuant to G.S. 114-9.4 shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes. All records maintained under this subsection shall be made available to the State Auditor for oversight purposes, upon request.

"Abusive Patent Assertions.""§ 75-136. Title.

This Article shall be known and may be cited as the "Abusive Patent Assertions Act."

"§ 75-137. Purpose.

(a) The General Assembly finds the following:

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

1 who have limited liability, as these companies may hold no cash or other
2 assets. North Carolina has a strong interest in making sure that prevailing
3 North Carolina companies sued by abusive patent assertions entities can
4 recover what is awarded to them.

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

12 "§ 75-138. Definitions.

13 The following definitions apply in this Article:

- 14 (1) Affiliate. – A business establishment, business, or other legal entity that
15 wholly or substantially owns, is wholly or substantially owned by, or is
16 under common ownership with another entity.
- 17 (2) Demand. – A letter, e-mail, or other communication asserting or claiming
18 that a target has engaged in patent infringement or should obtain a license to
19 a patent.
- 20 (3) Institution of higher education. – Defined in 20 U.S.C. § 1001(a).
- 21 (4) Interested party. – A person, other than the party alleging infringement, that
22 (i) is an assignee of the patent or patents at issue; (ii) has a right, including a
23 contingent right, to enforce or sublicense the patent or patents at issue; or
24 (iii) has a direct financial interest in the patent or patents at issue, including
25 the right to any part of an award of damages or any part of licensing revenue.
26 A "direct financial interest" does not include either of the following:
- 27 a. An attorney or law firm providing legal representation in the civil
28 action alleging patent infringement if the sole basis for the financial
29 interest of the attorney or law firm in the patent or patents at issue
30 arises from the attorney or law firm's receipt of compensation
31 reasonably related to the provision of the legal representation.
- 32 b. A person whose sole financial interest in the patent or patents at issue
33 is ownership of an equity interest in the party alleging infringement,
34 unless such person also has the right or ability to influence, direct, or
35 control the civil action.
- 36 (5) Operating entity. – A person primarily engaged in, when evaluated with its
37 affiliates over the preceding 24-month period and when disregarding the
38 selling and licensing of patents, one or more of the following activities:
- 39 a. Research and technical or experimental work to create, test, qualify,
40 modify, or validate technologies or processes for commercialization
41 of goods or services;
- 42 b. Manufacturing; or
- 43 c. The provision of goods or commercial services.
- 44 (6) Target. – A North Carolina person that meets one or more of the following:
- 45 a. The person has received a demand or is the subject of an assertion or
46 allegation of patent infringement.
- 47 b. The person has been threatened with litigation or is the defendant of
48 a filed lawsuit alleging patent infringement.
- 49 c. The person has customers who have received a demand asserting that
50 the person's product, service, or technology has infringed a patent.

51 "§ 75-139. Abusive patent assertions.

1 (a) It is unlawful for a person to make a bad-faith assertion of patent infringement. A
2 court may consider the following factors as evidence that a person has made a bad-faith
3 assertion of patent infringement:

- 4 (1) The demand does not contain all of the following information:
5 a. The patent application number or patent number.
6 b. The name and address of the patent owner or owners and assignee or
7 assignees, if any.
8 c. Factual allegations concerning the specific areas in which the target's
9 products, services, and technology infringe the patent or are covered
10 by specific, identified claims in the patent.
11 d. An explanation of why the person making the assertion has standing,
12 if the United States Patent and Trademark Office's assignment
13 system does not identify the person asserting the patent as the owner.
- 14 (2) Prior to sending the demand, the person failed to conduct an analysis
15 comparing the claims in the patent to the target's products, services, and
16 technology, or the analysis was done but does not identify specific areas in
17 which the products, services, and technology are covered by the claims in
18 the patent.
- 19 (3) The demand lacks the information described in subdivision (1) of this
20 subsection, the target requests the information, and the person fails to
21 provide the information within a reasonable period of time.
- 22 (4) The person demands payment of a license fee or response within an
23 unreasonably short period of time.
- 24 (5) The person offers to license the patent for an amount that is not based on a
25 reasonable estimate of the value of the license, or the person offers to license
26 the patent for an amount that is based on the cost of defending a potential or
27 actual lawsuit.
- 28 (6) The claim or assertion of patent infringement is meritless, and the person
29 knew or should have known that the claim or assertion is meritless; or the
30 claim or assertion relies on an interpretation of the patent that was
31 disclaimed during prosecution, and the person making the claim or assertion
32 knows or should have known about the disclaimer, or would have known
33 about the disclaimer if the person reviewed the patent's prosecution history.
- 34 (7) The claim or assertion of patent infringement is deceptive.
- 35 (8) The person or its subsidiaries or affiliates have previously or concurrently
36 filed or threatened to file one or more lawsuits based on the same or similar
37 claim of patent infringement and (i) those threats or lawsuits lacked the
38 information described in subdivision (1) of this subsection, or (ii) the person
39 attempted to enforce the claim of patent infringement in litigation and a
40 court found the claim to be meritless.
- 41 (9) The person making the claim or assertion sent the same demand or
42 substantially the same demand to multiple recipients and made assertions
43 against a wide variety of products and systems without reflecting those
44 differences in a reasonable manner in the demands.
- 45 (10) The person making the claim or assertion is aware of, but does not disclose,
46 any final, nonfinal, or preliminary postgrant finding of invalidity or
47 unpatentability involving the patent.
- 48 (11) The person making the claim or assertion seeks an injunction when that is
49 objectively unreasonable under the law.
- 50 (12) Any other factor the court finds relevant.

- 1 **(b)** A court may consider the following factors as evidence that a person has not made a
2 bad-faith assertion of patent infringement:
- 3 **(1)** The demand contains the information described in subdivision (1) of
4 subsection (a) of this section.
- 5 **(2)** Where the demand lacks the information described in subdivision (1) of
6 subsection (a) of this section and the target requests the information, the
7 person provides the information within a reasonable period of time.
- 8 **(3)** The person engages in a good-faith effort to establish that the target has
9 infringed the patent and to negotiate an appropriate remedy.
- 10 **(4)** The person makes a substantial investment in the use of the patent or in the
11 production or sale of a product or item that the person reasonably believes is
12 covered by the patent. "Use of the patent" in the preceding sentence means
13 actual practice of the patent and does not include licensing without actual
14 practice.
- 15 **(5)** The person is either (i) the inventor or joint inventor of the patent or, in the
16 case of a patent filed by and awarded to an assignee of the original inventor
17 or joint inventor, is the original assignee or (ii) an institution of higher
18 education or a technology transfer organization owned or affiliated with an
19 institution of higher education.
- 20 **(6)** The person has demonstrated good-faith business practices in previous
21 efforts to enforce the patent, or a substantially similar patent, or has
22 successfully enforced the patent, or a substantially similar patent, through
23 litigation.
- 24 **(7)** Any other factor the court finds relevant.
- 25 **(c)** This Article does not apply to any of the following:
- 26 **(1)** A demand letter or assertion of patent infringement arising under any of the
27 following:
- 28 **a.** 7 U.S.C. § 136 et seq.
- 29 **b.** 7 U.S.C. § 2321 et seq.
- 30 **c.** 21 U.S.C. § 301 et seq.
- 31 **d.** 35 U.S.C. § 161 et seq.
- 32 **e.** 35 U.S.C. § 271(e)(2).
- 33 **f.** 42 U.S.C. § 262.
- 34 **(2)** A demand letter or assertion of patent infringement by or on behalf of (i) an
35 institution of higher education incorporated under the laws of and with its
36 principal offices in North Carolina or (ii) a technology transfer organization
37 owned by or affiliated with the institution of higher education.
- 38 **(3)** A demand letter or assertion of patent infringement by or on behalf of a
39 nonprofit research organization recognized as exempt from federal income
40 tax under 26 U.S.C. § 501(c)(3) incorporated under the laws of and with its
41 principal offices in North Carolina, or a technology transfer organization
42 owned by or affiliated with the organization.
- 43 **(4)** A demand letter or assertion of patent infringement made by an operating
44 entity or its affiliate.
- 45 **(d)** Subject to the provisions of subsections (a) and (b) of this section, and provided the
46 activities are not carried out in bad faith, nothing in this section shall be construed to deem it an
47 unlawful practice for any person who owns or has the right to license or enforce a patent to do
48 any of the following:
- 49 **(1)** Advise others of that ownership or right of license or enforcement.
- 50 **(2)** Communicate to others that the patent is available for license or sale.
- 51 **(3)** Notify another of the infringement of the patent.

1 (4) Seek compensation on account of past or present infringement or for a
2 license to the patent.

3 **"§ 75-140. Bond.**

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

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

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

19 **"§ 75-141. Enforcement; remedies; damages.**

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

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

28 (1) Equitable relief.

29 (2) Damages.

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

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

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

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

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

49 (f) If a party is unable to pay an amount awarded by the court pursuant to subsection (a)
50 or (b) of this section, the court may find any interested party joined pursuant to subsection (d)

1 of this section jointly and severally liable for the abusive patent assertion and make the award
2 recoverable against any or all of the joined interested parties.

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

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

10 **PART V. SHAREHOLDER ASSENT TO EXCLUSIVE FORUM**

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

13 **"§ 55-7-50. Shareholder assent to exclusive forum.**

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

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

24 **PART VI. JOINT SELECT COMMITTEE TO STUDY THE NEED FOR REFORM IN** 25 **THE LAWS GOVERNING THE APPORTIONMENT OF TORT LIABILITY**

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

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

- 29 (1) Five members of the Senate appointed by the President Pro Tempore of the
30 Senate.
- 31 (2) Five members of the House of Representatives appointed by the Speaker of
32 the House of Representatives.

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

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

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

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

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

1 upon filing its final report or upon the convening of the 2015 General Assembly, whichever is
2 earlier.

3
4 **PART VII. THREE-JUDGE PANEL TO HEAR CLAIMS CHALLENGING THE**
5 **FACIAL CONSTITUTIONALITY OF AN ACT OF THE GENERAL ASSEMBLY**

6 **SECTION 7.1.** Article 26A of Chapter 1 of the General Statutes reads as rewritten:

7 "Article 26A.

8 "Three-Judge Panel for Redistricting ~~Challenges~~.Challenges and
9 for Certain Challenges to State Laws.

10 **"§ 1-267.1. Three-judge panel for actions challenging plans apportioning or redistricting**
11 **State legislative or congressional ~~districts~~.districts; claims challenging the facial**
12 **validity of an act of the General Assembly.**

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

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

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

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

1 **(b2)** The Chief Justice of the Supreme Court shall appoint three resident superior court
2 judges to a three-judge panel of the Superior Court of Wake County to hear and determine
3 challenges to the validity of statutes and acts pursuant to subsection (a1) of this section. The
4 initial judges appointed to the panel shall remain as a standing three-judge panel to hear any
5 action transferred to the panel for determination pursuant to this section, and the Chief Justice
6 shall appoint a presiding judge of the three-judge panel. To ensure that members of the
7 three-judge panel are drawn from different regions of the State, the Chief Justice shall appoint
8 to the three-judge panel one resident superior court judge from the First or Second Judicial
9 Division, one resident superior court judge from the Seventh or Eighth Judicial Division, and
10 one resident superior court judge from the Third, Fourth, Fifth, or Sixth Division. Should any
11 member of the three-judge panel be disqualified or otherwise unable to serve on the three-judge
12 panel or is removed from the panel at the discretion of the Chief Justice, the Chief Justice shall
13 appoint as a replacement another resident superior court judge from the same group of judicial
14 divisions as the resident superior court judge being replaced.

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

22 **(d)** This section applies only to civil proceedings, and nothing in this section shall be
23 deemed to apply to a defendant in criminal proceedings or to proceedings in which Chapter
24 15A of the General Statutes is applicable."

25 **SECTION 7.2.** G.S. 1-81.1 reads as rewritten:

26 **"§ 1-81.1. Venue in apportionment or redistricting ~~eases cases; certain injunctive relief~~**
27 **actions.**

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

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

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

45 **SECTION 7.3.** G.S. 1A-1, Rule 42, reads as rewritten:

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

47 **(a)** Consolidation. – Except as provided in subdivision (b)(2) of this section, when
48 actions involving a common question of law or fact are pending in one division of the court, the
49 judge may order a joint hearing or trial of any or all the matters in issue in the actions; he may
50 order all the actions consolidated; and he may make such orders concerning proceedings
51 therein as may tend to avoid unnecessary costs or delay. When actions involving a common

1 question of law or fact are pending in both the superior and the district court of the same
2 county, a judge of the superior court in which the action is pending may order all the actions
3 consolidated, and he may make such orders concerning proceedings therein as may tend to
4 avoid unnecessary costs or delay.

5 (b) Separate trials. –

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

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

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

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

42 **SECTION 7.4.** G.S. 1A-1, Rule 62, reads as rewritten:

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

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

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

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

17 (d) Stay upon appeal. – When an appeal is taken, the appellant may obtain a stay of
18 execution, subject to the exceptions contained in section (a), by proceeding in accordance with
19 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,
20 G.S. 1-294, and G.S. 1-295.

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

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

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

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

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

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

49 **"§ 7A-27. Appeals of right from the courts of the trial divisions.**

1 (a) Appeal lies of right directly to the Supreme Court in all cases in which the
2 defendant is convicted of murder in the first degree and the judgment of the superior court
3 includes a sentence of death.

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

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

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

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

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

16 a. Affects a substantial right.

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

19 c. Discontinues the action.

20 d. Grants or refuses a new trial.

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

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

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

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

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

37 38 **PART VIII. SEVERABILITY AND EFFECTIVE DATE**

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

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