

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

H

D

HOUSE BILL 239  
PROPOSED COMMITTEE SUBSTITUTE H239-PCS40173-TC-4

Short Title: Reduce Court of Appeals to 12 Judges.

(Public)

Sponsors:

Referred to:

March 6, 2017

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE NUMBER OF JUDGES ON THE COURT OF APPEALS TO TWELVE; TO PROVIDE AN APPEAL OF RIGHT FOR TRIAL COURT DECISIONS REGARDING CLASS ACTION CERTIFICATION; AND TO PROVIDE FOR DISCRETIONARY REVIEW BY THE SUPREME COURT IN CASES WHERE THE SUBJECT MATTER INVOLVES THE JURISDICTION AND INTEGRITY OF THE COURT SYSTEM.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7A-16, as amended by Section 22(a) of S.L. 2016-125, reads as rewritten:

**"§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.



\* H 2 3 9 - P C S 4 0 1 7 3 - T C - 4 \*

1 On or after December 15, 2000, the Governor shall appoint three additional judges to increase  
2 the number of judges to 15.

3 On or after January 1, 2017, whenever the seat of an incumbent judge becomes vacant prior to  
4 the expiration of the judge's term due to the death, resignation, retirement, impeachment, or  
5 removal pursuant to G.S. 7A-374.2(8) of the incumbent judge, that seat is abolished until the total  
6 number of Court of Appeals seats is decreased to 12.

7 The Court of Appeals shall sit in panels of three judges each and may also sit en banc to hear  
8 or rehear any cause upon a vote of the majority of the judges of the court. The Chief Judge insofar  
9 as practicable shall assign the members to panels in such fashion that each member sits a  
10 substantially equal number of times with each other member, shall preside when a member of a  
11 panel, and shall designate the presiding judge of the other panel or panels.

12 Except as may be provided in G.S. 7A-32, three judges shall constitute a quorum for the  
13 transaction of the business of the court when sitting in panels of three judges, and a majority of the  
14 then sitting judges on the Court of Appeals shall constitute a quorum for the transaction of the  
15 business of the court when sitting en banc.

16 In the event the Chief Judge is unable, on account of absence or temporary incapacity, to  
17 perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief  
18 Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

19 **SECTION 2.** G.S. 7A-27, as amended by Section 22(b) of S.L. 2016-125, reads as  
20 rewritten:

21 "**§ 7A-27. Appeals of right from the courts of the trial divisions.**

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

- 23 (1) All cases in which the defendant is convicted of murder in the first degree and  
24 the judgment of the superior court includes a sentence of death.
- 25 (2) From any final judgment in a case designated as a mandatory complex business  
26 case pursuant to G.S. 7A-45.4 or designated as a discretionary complex  
27 business case pursuant to Rule 2.1 of the General Rules of Practice for the  
28 Superior and District Courts.
- 29 (3) From any interlocutory order of a Business Court Judge that does any of the  
30 following:
- 31 a. Affects a substantial right.
- 32 b. In effect determines the action and prevents a judgment from which an  
33 appeal might be taken.
- 34 c. Discontinues the action.
- 35 d. Grants or refuses a new trial.
- 36 (4) Any trial court's decision regarding class action certification under G.S. 1A-1,  
37 Rule 23.

38 (b) Except as provided in subsection (a) of this section, appeal lies of right directly to the  
39 Court of Appeals in any of the following cases:

- 40 (1) From any final judgment of a superior court, other than one based on a plea of  
41 guilty or nolo contendere, including any final judgment entered upon review of  
42 a decision of an administrative agency, except for a final judgment entered  
43 upon review of a court martial under G.S. 127A-62.
- 44 (2) From any final judgment of a district court in a civil action.
- 45 (3) From any interlocutory order or judgment of a superior court or district court in  
46 a civil action or proceeding that does any of the following:
- 47 a. Affects a substantial right.
- 48 b. In effect determines the action and prevents a judgment from which an  
49 appeal might be taken.
- 50 c. Discontinues the action.
- 51 d. Grants or refuses a new trial.

- 1 e. Determines a claim prosecuted under G.S. 50-19.1.
- 2 f. Grants temporary injunctive relief restraining the State or a political
- 3 subdivision of the State from enforcing the operation or execution of an
- 4 act of the General Assembly. This sub-subdivision only applies where
- 5 the State or a political subdivision of the State is a party in the civil
- 6 action.
- 7 (4) From any other order or judgment of the superior court from which an appeal is
- 8 authorized by statute.
- 9 (c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013."

10 **SECTION 3.** G.S. 7A-31, as amended by Section 22(d) of S.L. 2016-125, reads as  
 11 rewritten:

12 "**§ 7A-31. Discretionary review by the Supreme Court.**

13 ...  
 14 (b) In causes subject to certification under subsection (a) of this section, certification may  
 15 be made by the Supreme Court before determination of the cause by the Court of Appeals when in  
 16 the opinion of the Supreme ~~Court:~~Court any of the following apply:

- 17 (1) The subject matter of the appeal has significant public ~~interest,~~or interest.
- 18 (2) The cause involves legal principles of major significance to the jurisprudence of
- 19 the ~~State,~~or State.
- 20 (3) Delay in final adjudication is likely to result from failure to certify and thereby
- 21 cause substantial ~~harm,~~or harm.
- 22 (4) The work load of the courts of the appellate division is such that the expeditious
- 23 administration of justice requires certification.
- 24 (5) The subject matter of the appeal is important in overseeing the jurisdiction and
- 25 integrity of the court system.

26 (c) In causes subject to certification under subsection (a) of this section, certification may  
 27 be made by the Supreme Court after determination of the cause by the Court of Appeals when in  
 28 the opinion of the Supreme ~~Court:~~Court any of the following apply:

- 29 (1) The subject matter of the appeal has significant public ~~interest,~~or interest.
- 30 (2) The cause involves legal principles of major significance to the jurisprudence of
- 31 the ~~State,~~or State.
- 32 (3) The decision of the Court of Appeals appears likely to be in conflict with a
- 33 decision of the Supreme Court.

34 Interlocutory determinations by the Court of Appeals, including orders remanding the cause for a  
 35 new trial or for other proceedings, shall be certified for review by the Supreme Court only upon a  
 36 determination by the Supreme Court that failure to certify would cause a delay in final  
 37 adjudication which would probably result in substantial harm.

38 ...."

39 **SECTION 4.** This act is effective when it becomes law.