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Short Title: Business Court Modernization.

(Public)

Sponsors:

Referred to:

May 28, 2014

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE BUSINESS COURT BY MAKING TECHNICAL,
3 CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE PROCEDURES FOR
4 COMPLEX BUSINESS CASES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** G.S. 7A-27(a) reads as rewritten:

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

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

9 (1) ~~all~~ All cases in which the defendant is convicted of murder in the first degree
10 and the judgment of the superior court includes a sentence of death.

11 (2) From any final judgment in a case designated as a mandatory complex
12 business case pursuant to G.S. 7A-45.4 or designated as a discretionary
13 complex business case pursuant to Rule 2.1 of the General Rules of Practice
14 for the Superior and District Courts.

15 (3) From any interlocutory order of a Business Court Judge which does any of
16 the following:

17 a. Affects a substantial right.

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

20 c. Discontinues the action.

21 d. Grants or refuses a new trial."

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

25 **SECTION 2.** G.S. 7A-45.3 reads as rewritten:

26 "**§ 7A-45.3. Superior court judges designated for complex business cases.**

27 The Chief Justice may exercise the authority under rules of practice prescribed pursuant to
28 G.S. 7A-34 to designate one or more of the special superior court judges authorized by
29 G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice.
30 Any judge so designated shall be known as a Business Court Judge and shall preside in the
31 Business Court. If there is more than one business court judge, the Chief Justice may designate
32 one of them as the Senior Business Court Judge. If there is no designation by the Chief Justice,
33 the judge with the longest term of service on the court shall serve as Senior Business Court



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1 Judge until the Chief Justice makes an appointment to the position. The presiding Business
2 Court Judge shall issue a written opinion in connection with any order granting or denying a
3 motion under G.S. 1A-1, Rule 12, 56, 59, or 60 or any order finally disposing of a complex
4 business case."

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

6 **"§ 7A-45.4. Designation of complex business cases.**

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

- 10 (1) ~~The law governing corporations, except charitable and religious~~
11 ~~organizations qualified under G.S. 55A-1-40(4) on the grounds of religious~~
12 ~~purpose, partnerships, limited liability companies, and limited liability~~
13 ~~partnerships, including issues concerning governance, involuntary~~
14 ~~dissolution of a corporation, mergers and acquisitions, breach of duty of~~
15 ~~directors, election or removal of directors, enforcement or interpretation of~~
16 ~~shareholder agreements, and derivative actions.~~ Disputes involving the law
17 governing corporations, except charitable and religious organizations
18 qualified under G.S. 55A-1-40(4) on the grounds of religious purpose,
19 partnerships, and limited liability companies, including disputes arising
20 under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.
- 21 (2) ~~Securities law, including proxy disputes and tender offer disputes.~~ Disputes
22 involving securities, including disputes arising under Chapter 78A of the
23 General Statutes.
- 24 (3) ~~Antitrust law, except claims based solely on unfair competition under~~
25 ~~G.S. 75-1.1.~~ Disputes involving antitrust or unfair competition law, including
26 disputes arising under Chapter 75 of the General Statutes, that do not arise
27 solely under G.S. 75-1.1 or Article 2 of Chapter 75 of the General Statutes.
- 28 (4) ~~State trademark or unfair competition law, except claims based solely on~~
29 ~~unfair competition under G.S. 75-1.1.~~ Disputes involving trademark law,
30 including disputes arising under Chapter 80 of the General Statutes.
- 31 (5) ~~Intellectual property law, including software licensing disputes.~~ Disputes
32 involving the ownership, use, licensing, lease, installation, or performance of
33 intellectual property, including computer software, software applications,
34 information technology and systems, data and data security,
35 pharmaceuticals, biotechnology products, and bioscience technologies.
- 36 (6) ~~The Internet, electronic commerce, and biotechnology.~~
- 37 (7) ~~Tax law, when the dispute has been the subject of a contested tax case for~~
38 ~~which judicial review is requested under G.S. 105-241.16 or the dispute is a~~
39 ~~civil action under G.S. 105-241.17.~~
- 40 (8) Disputes involving trade secrets, including disputes arising under Article 24
41 of Chapter 66 of the General Statutes, except for disputes involving
42 enforcement of a non-competition or non-solicitation covenant against an
43 individual employee.
- 44 (9) Contract disputes in which all of the following conditions are met:
 - 45 a. At least one plaintiff and at least one defendant is an entity
46 authorized to transact business in North Carolina under Chapter 55,
47 55A, 55B, 57D, or 59 of the General Statutes.
 - 48 b. The complaint asserts a claim for breach of contract or seeks a
49 declaration of rights, status, or other legal relations under a contract.
 - 50 c. The amount in controversy computed in accordance with
51 G.S. 7A-243 is at least one million dollars (\$1,000,000).

1 d. All parties consent to the designation.

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

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

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

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

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

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

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

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

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

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

46 (e) Within 30 days after service of the Notice of Designation, any other party may, in
47 good faith, file and serve an opposition to the designation of the action as a mandatory complex
48 business case. The opposition to the designation of the action shall assert all grounds on which
49 the party opposing designation objects to the designation, and any grounds not asserted shall be
50 deemed conclusively waived. Within 30 days after the entry of an order staying a pending
51 action pursuant to subsection (g) of this section, any party opposing the stay shall file an

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

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

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

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

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

26 "**§ 7A-305. Costs in civil actions.**

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

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

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

4 ...

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

8"

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

10 **"§ 7A-343. Duties of Director.**

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

13 ...

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

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

30"

31 **SECTION 6.** Section 1 of this act becomes effective October 1, 2014, and applies
32 to actions designated as mandatory complex business cases on or after that date. Sections 3 and
33 4 of this act become effective October 1, 2014, and apply to actions commenced or petitions
34 filed on or after that date. Unless otherwise provided by this act, the remainder of this act is
35 effective when it becomes law.