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Short Title: Amend Info./Child Supp. Orders.

(Public)

Sponsors:

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March 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING INFORMATION PROVIDED TO
NONCUSTODIAL PARENTS SUBJECT TO WAGE WITHHOLDING ORDERS
UNDER THE LAWS PERTAINING TO CHILD SUPPORT, TO MAKE TECHNICAL
CORRECTIONS TO THE UNIFORM DEPLOYED PARENTS CUSTODY AND
VISITATION ACT, TO MODERNIZE THE BUSINESS COURT BY MAKING
TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE
PROCEDURES FOR COMPLEX BUSINESS CASES, TO STREAMLINE THE
PROCESS OF CORPORATE REORGANIZATION UTILIZING HOLDING
COMPANIES, TO ALLOW FOR SHAREHOLDER ASSENT TO EXCLUSIVE FORUM,
AND TO CREATE A THREE-JUDGE PANEL TO RULE ON CLAIMS THAT AN ACT
OF THE GENERAL ASSEMBLY IS FACIALLY INVALID BASED UPON THE
NORTH CAROLINA OR UNITED STATES CONSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-136.3(a) reads as rewritten:

"(a) Required Contents of Support Orders. All child support orders, civil or criminal, entered or modified in the State in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order ~~shall~~ shall comply with each of the following:

- (1) Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing ~~address;~~ address.
- (2),(2a) Repealed by Session Laws 1993, c. 517, s. 1.
- (3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable ~~income;~~ income.
- (4) Require the custodial party to keep the obligor informed of ~~(i)~~ the custodial party's disposable income and the amount and effective date of any substantial change in this disposable ~~income and (ii)~~ income.
- (4a) Include the current residence and mailing address of the child, unless custodial parent, or the address of the child if the address of the custodial parent and the address of the child are different. However, there is no



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1 requirement that the child support order contain the address of the custodial
2 parent or the child if (i) there is an existing order prohibiting disclosure of
3 the custodial parent's or child's address to the obligor or (ii) the court has
4 determined that notice to the obligor is inappropriate because the obligor has
5 made verbal or physical threats that constitute domestic violence under
6 Chapter 50B of the General Statutes; and Statutes.

- 7 (5) Require the obligor to keep the initiating party informed of the name and
8 address of any payor of the obligor's disposable income and of the amount
9 and effective date of any substantial change in this disposable income."

10 **SECTION 2.** G.S. 50A-370(a) reads as rewritten:

11 "(a) After a deploying parent receives notice of deployment and during the deployment,
12 a court may issue a temporary order granting custodial responsibility unless prohibited by the
13 Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 521-522. A court may not issue a
14 permanent order granting custodial responsibility in the absence of the deploying parent
15 without the consent of the deploying parent."

16 **SECTION 3.** G.S. 50A-379(a) reads as rewritten:

17 "(a) Except for an order in accordance with G.S. 50A-373 or as otherwise provided in
18 subsection (b) of this section, and consistent with the Servicemembers Civil Relief Act, 50
19 U.S.C. app. §§ 521-522, on motion of a deploying or other parent or any nonparent to whom
20 caretaking authority, decision-making authority, or limited contact has been granted, the court
21 may modify or terminate a grant of caretaking authority, decision-making authority, or limited
22 contact made pursuant to this Article if the modification or termination is consistent with this
23 Part and the court finds it is in the best interest of the child. Any modification shall be
24 temporary and terminates following the conclusion of deployment of the deployed parent
25 according to the procedures under Part 4 of this Article, unless the grant has been terminated
26 before that time by court order."

27 **SECTION 4.** G.S. 50A-385(c) reads as rewritten:

28 "(c) In the absence of an agreement to terminate, the temporary agreement granting
29 custodial responsibility terminates 60 days from the date of ~~one of the following:~~

- 30 (1) ~~The date the deploying parent gives notice to the other parent that the~~
31 ~~deploying parent has returned from deployment.~~
32 (2) ~~The date stated in an order terminating the temporary grant of custodial~~
33 ~~responsibility.~~
34 (3) ~~The death of the deploying parent.~~ the deploying parent gives notice to the
35 other parent that the deploying parent has returned from deployment, unless earlier terminated
36 upon the date stated in an order terminating the temporary grant of custodial responsibility or
37 the death of the deploying parent."

38 **SECTION 5.** G.S. 50A-388(a) reads as rewritten:

39 "(a) A temporary order for custodial responsibility issued under Part 3 of this Article
40 shall terminate, if no agreement between the parties to terminate a temporary order for
41 custodial responsibility has been filed, 60 days from ~~(i) the date the deploying parent gives~~
42 ~~notice of having returned from deployment to the other parent or~~ and any nonparent granted
43 ~~custodial responsibility~~ responsibility, when applicable, or (ii) upon the death of the deploying
44 ~~parent.~~ parent, whichever occurs first."

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

46 "**§ 7A-27. Appeals of right from the courts of the trial divisions.**

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

- 48 (1) ~~all~~ All cases in which the defendant is convicted of murder in the first degree
49 and the judgment of the superior court includes a sentence of death.
50 (2) From any final judgment in a case designated as a mandatory complex
51 business case pursuant to G.S. 7A-45.4 or designated as a discretionary

1 complex business case pursuant to Rule 2.1 of the General Rules of Practice
 2 for the Superior and District Courts.

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

5 a. Affects a substantial right.

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

8 c. Discontinues the action.

9 d. Grants or refuses a new trial."

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

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

14 **"§ 7A-45.3. Superior court judges designated for complex business cases.**

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

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

27 **"§ 7A-45.4. Designation of complex business cases.**

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

31 (1) ~~The law governing corporations, except charitable and religious~~
 32 ~~organizations qualified under G.S. 55A-1-40(4) on the grounds of religious~~
 33 ~~purpose, partnerships, limited liability companies, and limited liability~~
 34 ~~partnerships, including issues concerning governance, involuntary~~
 35 ~~dissolution of a corporation, mergers and acquisitions, breach of duty of~~
 36 ~~directors, election or removal of directors, enforcement or interpretation of~~
 37 ~~shareholder agreements, and derivative actions.~~ Disputes involving the law
 38 governing corporations, except charitable and religious organizations
 39 qualified under G.S. 55A-1-40(4) on the grounds of religious purpose,
 40 partnerships, and limited liability companies, including disputes arising
 41 under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.

42 (2) ~~Securities law, including proxy disputes and tender offer disputes.~~ Disputes
 43 involving securities, including disputes arising under Chapter 78A of the
 44 General Statutes.

45 (3) ~~Antitrust law, except claims based solely on unfair competition under~~
 46 ~~G.S. 75-1.1.~~ Disputes involving antitrust or unfair competition law, including
 47 disputes arising under Chapter 75 of the General Statutes, that do not arise
 48 solely under G.S. 75-1.1 or Article 2 of Chapter 75 of the General Statutes.

49 (4) ~~State trademark or unfair competition law, except claims based solely on~~
 50 ~~unfair competition under G.S. 75-1.1.~~ Disputes involving trademark law,
 51 including disputes arising under Chapter 80 of the General Statutes.

- 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 noncompetition or nonsolicitation 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).
44 (3) An action involving regulation of pole attachments brought pursuant to
45 G.S. 62-350 shall be designated as a mandatory complex business case by
46 the plaintiff.
47 (c) A party designating an action as a mandatory complex business case shall file a
48 Notice of Designation in the Superior Court in which the action has been filed, shall
49 contemporaneously serve the notice on each opposing party or counsel and on the Special
50 Superior Court Judge for Complex Business Cases who is then the senior Business Court
51 Judge, and shall contemporaneously send a copy of the notice by e-mail to the Chief Justice of

1 the Supreme Court for approval of the designation of the action as a mandatory complex
2 business case and assignment to a specific Business Court Judge. The Notice of Designation
3 shall, in good faith and based on information reasonably available, succinctly state the basis of
4 the designation and include a certificate by or on behalf of the designating party that the civil
5 action meets the criteria for designation as a mandatory complex business case pursuant to
6 subsection (a) or (b) of this section.

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

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

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

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

15 (4) By any party whose pleading caused the amount in controversy computed in
16 accordance with G.S. 7A-243 to equal or exceed five million dollars
17 (\$5,000,000) contemporaneously with the filing of that pleading.

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

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

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

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

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

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

51 **"§ 7A-305. Costs in civil actions.**

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

3 ...
 4 (2) For support of the General Court of Justice, the sum of one hundred eighty
 5 dollars (\$180.00) in the superior court and the sum of one hundred thirty
 6 dollars (\$130.00) in the district court except that if the case is assigned to a
 7 magistrate the sum shall be eighty dollars (\$80.00). If a case is assigned to a
 8 special superior court judge as a complex business case under G.S. 7A-45.3,
 9 upon assignment the party filing the notice of designation pursuant to
 10 G.S. 7A-45.4 or the motion for complex business designation shall pay an
 11 additional one thousand one hundred dollars ~~(\$1,000)~~ (\$1,100) for support of
 12 the General Court of Justice; if a case is assigned to a special superior court
 13 judge as a complex business case under G.S. 7A-45.3 by a court on its own
 14 motion, upon assignment the plaintiff shall pay an additional one thousand
 15 one hundred dollars ~~(\$1,000)~~ (\$1,100) for support of the General Court of
 16 Justice. Sums collected under this subdivision shall be remitted to the State
 17 Treasurer. The State Treasurer shall remit the sum of one dollar and fifty
 18 cents (\$1.50) of each fee collected under this subdivision to the North
 19 Carolina State Bar for the provision of services described in G.S. 7A-474.4,
 20 and ninety-five cents (\$.95) of each fee collected under this subdivision to
 21 the North Carolina State Bar for the provision of services described in
 22 G.S. 7A-474.19.

23 ...
 24 (d) The following expenses, when incurred, are assessable or recoverable, as the case
 25 may be. The expenses set forth in this subsection are complete and exclusive and constitute a
 26 limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

27 ...
 28 (12) The fee assessed pursuant to subdivision (2) of subsection (a) of this section
 29 upon assignment of a case to a special superior court judge as a complex
 30 business case.

31"

32 **SECTION 10.** G.S. 7A-343 reads as rewritten:
 33 **"§ 7A-343. Duties of Director.**

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

36 ...
 37 (8) Prepare and submit an annual report on the work of the Judicial Department
 38 to the Chief Justice, and transmit a copy to each member of the General
 39 Assembly. The annual report shall include the activities of each North
 40 Carolina Business Court site, including the number of new, closed, and
 41 pending cases, the average age of pending cases, and the annual
 42 expenditures for the prior fiscal year.

43 (8a) Prepare and submit a semiannual report on the activities of each North
 44 Carolina business court site to the Chief Justice and to each member of the
 45 General Assembly. The semiannual report required under this subdivision
 46 shall be separate from the report required under subdivision (8) of this
 47 section and shall include the total number of civil cases pending in each
 48 business court site over three years after being designated as a mandatory
 49 complex business case, motions pending over six months after being filed,
 50 and civil cases in which bench trials have been concluded for over six

1 months without entry of judgment, including any accompanying explanation
2 provided by the Business Court.

3 "

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

6 **"§ 55-11-11. Merger to effect a holding company reorganization.**

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

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

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

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

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

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

23 (6) "Surviving entity" means the corporation incorporated under the laws of this
24 State or limited liability company organized under the laws of this State that
25 is the surviving entity in a merger of a constituent corporation with or into a
26 single direct or indirect wholly owned subsidiary of the constituent
27 corporation, which immediately following the merger is a direct or indirect
28 wholly owned subsidiary of the holding company.

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

33 (1) The constituent corporation and the direct or indirect wholly owned
34 subsidiary of the constituent corporation are the only constituent entities to
35 the merger.

36 (2) Each share or fraction of a share of the capital stock of the constituent
37 corporation outstanding immediately prior to the effective time of the merger
38 is converted in the merger into a share or equal fraction of a share of capital
39 stock of a holding company having the same designations, rights, powers,
40 and preferences, and the qualifications, limitations, and restrictions thereof,
41 as the share or fraction of a share of the capital stock of the constituent
42 corporation being converted in the merger.

43 (3) The holding company and the constituent corporation are both corporations
44 of this State and the direct or indirect wholly owned subsidiary that is the
45 other constituent entity to the merger is a corporation or limited liability
46 company of this State.

47 (4) The articles of incorporation and bylaws of the holding company
48 immediately following the effective time of the merger contain provisions
49 identical to the articles of incorporation and bylaws of the constituent
50 corporation immediately prior to the effective time of the merger other than
51 provisions, if any, regarding any of the following:

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

1 act or transaction by or involving the surviving entity, other than the election
2 or removal of directors or managers, managing members, or other members
3 of the governing body of the surviving entity, which would require the
4 approval of the shareholders of the surviving entity if the surviving entity
5 were a corporation subject to this Chapter.

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

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

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

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

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

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

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

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

47 (g) If a plan of merger is adopted by a constituent corporation by action of its board of
48 directors and without any vote of shareholders pursuant to this section, but otherwise in
49 accordance with G.S. 55-11-01, the secretary or assistant secretary of the constituent
50 corporation shall certify on the plan of merger that the plan has been adopted pursuant to this
51 section and that the conditions specified in subsection (b) of this section have been satisfied.

1 This certification on the plan of merger is not required if a certificate of merger or
2 consolidation is registered in lieu of filing the plan of merger. The plan so adopted and certified
3 shall then be filed and become effective in accordance with G.S. 55-11-05. That filing is a
4 representation by the person who executes the agreement that the facts stated in the certificate
5 remain true immediately prior to the filing.

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

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

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

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

12 **"§ 55-11-06. Effect of merger or share exchange.**

13 (a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, ~~or 55-11-09~~
14 ~~55-11-09, or 55-11-11~~ takes effect:

15 "...."

16 **SECTION 12.(a)** Article 26A of Chapter 1 of the General Statutes reads as
17 rewritten:

18 "Article 26A.

19 "Three-Judge Panel for Redistricting ~~Challenges~~Challenges and
20 for Certain Challenges to State Laws.

21 **"§ 1-267.1. Three-judge panel for actions challenging plans apportioning or redistricting**
22 **State legislative or congressional ~~districts~~districts; claims challenging the facial**
23 **validity of an act of the General Assembly.**

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

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

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

1 three-judge panel be disqualified or otherwise unable to serve on the three-judge panel, the
2 Chief Justice shall appoint as a replacement another resident superior court judge from the
3 same group of judicial divisions as the resident superior court judge being replaced.

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

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

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

32 (d) This section applies only to civil proceedings, and nothing in this section shall be
33 deemed to apply to a defendant in criminal proceedings or to proceedings in which Chapter
34 15A of the General Statutes is applicable."

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

36 **"§ 1-81.1. Venue in apportionment or redistricting ~~eases~~cases; certain injunctive relief**
37 **actions.**

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

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

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

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

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

6 (a) Consolidation. – Except as provided in subdivision (b)(2) of this section, when
7 actions involving a common question of law or fact are pending in one division of the court, the
8 judge may order a joint hearing or trial of any or all the matters in issue in the actions; he may
9 order all the actions consolidated; and he may make such orders concerning proceedings
10 therein as may tend to avoid unnecessary costs or delay. When actions involving a common
11 question of law or fact are pending in both the superior and the district court of the same
12 county, a judge of the superior court in which the action is pending may order all the actions
13 consolidated, and he may make such orders concerning proceedings therein as may tend to
14 avoid unnecessary costs or delay.

15 (b) Separate trials. –

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

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

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

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

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

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

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

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

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

27 (d) Stay upon appeal. – When an appeal is taken, the appellant may obtain a stay of
28 execution, subject to the exceptions contained in section (a), by proceeding in accordance with
29 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,
30 G.S. 1-294, and G.S. 1-295.

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

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

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

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

50 (h) Injunction pending appeal of as-applied constitutional challenge. – Notwithstanding
51 any other provision of law where a trial court grants interlocutory, temporary, or permanent

1 injunctive or declaratory relief restraining the State or a political subdivision of the State from
2 enforcing the operation or execution of an act of the General Assembly as applied against a
3 party in a civil action, the court shall stay the relief granted pending appeal. This subsection
4 only applies where the State or a political subdivision of the State is a party in the civil action.
5 This subsection does not apply to facial challenges heard by a three-judge panel pursuant to
6 G.S. 1-267.1."

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

8 **"§ 7A-27. Appeals of right from the courts of the trial divisions.**

9 ...

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

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

- 14 (1) From any final judgment of a superior court, other than the one described in
15 subsection (a) of this section, or one based on a plea of guilty or nolo
16 contendere, including any final judgment entered upon review of a decision
17 of an administrative agency, except for a final judgment entered upon review
18 of a court martial under G.S. 127A-62.
- 19 (2) From any final judgment of a district court in a civil action.
- 20 (3) From any interlocutory order or judgment of a superior court or district court
21 in a civil action or proceeding which does any of the following:
- 22 a. Affects a substantial right.
- 23 b. In effect determines the action and prevents a judgment from which
24 an appeal might be taken.
- 25 c. Discontinues the action.
- 26 d. Grants or refuses a new trial.
- 27 e. Determines a claim prosecuted under G.S. 50-19.1.
- 28 f. Grants temporary injunctive relief restraining the State or a political
29 subdivision of the State from enforcing the operation or execution of
30 an act of the General Assembly as applied against a party in a civil
31 action. This subsection only applies where the State or a political
32 subdivision of the State is a party in the civil action. This subsection
33 does not apply to facial challenges heard by a three-judge panel
34 pursuant to G.S. 1-267.1.
- 35 (4) From any other order or judgment of the superior court from which an
36 appeal is authorized by statute."

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

38 **"§ 105-241.17. Civil action challenging statute as unconstitutional.**

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

- 45 (1) The taxpayer exhausted the prehearing remedy by receiving a final
46 determination after a review and a conference.
- 47 (2) The taxpayer commenced a contested case at the Office of Administrative
48 Hearings.
- 49 (3) The Office of Administrative Hearings dismissed the contested case petition
50 for lack of jurisdiction because the sole issue is the constitutionality of a
51 statute and not the application of a statute.

- 1 (4) The taxpayer has paid the amount of tax, penalties, and interest the final
- 2 determination states is due.
- 3 (5) The civil action is filed within two years of the dismissal."

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

6 "**§ 55-7-50. Shareholder assent to exclusive forum.**

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

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