

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 853

Short Title: Business Court Modernization. (Public)

Sponsors: Senators Rucho and Barringer (Primary Sponsors).

Referred to: Judiciary I.

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

16 "§ 7A-45.3. Superior court judges designated for complex business cases.

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

26 SECTION 3. 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 following:

30 (1) Disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General
31 Statutes concerning partnerships, limited liability companies, and
32 corporations, except charitable and religious organizations qualified under
33 G.S. 55A-1-40(4) on the grounds of religious purpose.~~The law governing~~
34 ~~corporations, except charitable and religious organizations qualified under~~
35 ~~G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, limited~~
36 ~~liability companies, and limited liability partnerships, including issues~~



1 ~~concerning governance, involuntary dissolution of a corporation, mergers~~
2 ~~and acquisitions, breach of duty of directors, election or removal of~~
3 ~~directors, enforcement or interpretation of shareholder agreements, and~~
4 ~~derivative actions.~~

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

7 (3) Antitrust law, Disputes involving antitrust or unfair competition law arising
8 under common law or under Chapter 75 of the General Statutes, except
9 claims based solely on unfair competition under G.S. 75-1.1.

10 (4) Disputes involving trademark law arising under Chapter 80 of the General
11 Statutes. State trademark or unfair competition law, except claims based
12 solely on unfair competition under G.S. 75-1.1.

13 (5) Intellectual property law, including software licensing disputes.

14 (6) The Internet, electronic commerce, and biotechnology.

15 (7) Tax law, when the dispute has been the subject of a contested tax case for
16 which judicial review is requested under G.S. 105-241.16 or the dispute is a
17 civil action under G.S. 105-241.17.

18 (8) Disputes involving trade secrets under Article 24 of Chapter 66 of the
19 General Statutes.

20 (9) Contract disputes in which all of the following conditions are met:

21 (i) At least one plaintiff and at least one defendant is an entity
22 authorized to transact business in North Carolina under Chapter 55,
23 55A, 55B, 57D, or 59 of the General Statutes.

24 (ii) The complaint asserts a claim for breach of contract or seeks a
25 declaration of rights, status, or other legal relations under a contract.

26 (iii) The amount in controversy computed in accordance with
27 G.S. 7A-243 is at least one million dollars (\$1,000,000).

28 (b) The following actions shall be designated as mandatory complex business cases:

29 (1) An action involving a material issue related to tax law that has been the
30 subject of a contested tax case for which judicial review is requested under
31 G.S. 105-241.16 or that is a civil action under G.S. 105-241.17 shall be
32 designated as a mandatory complex business case by the petitioner or
33 plaintiff.

34 (2) An action described in subsection (a) of this section in which the amount in
35 controversy computed in accordance with G.S. 7A-243 is at least five
36 million dollars (\$5,000,000) shall be designated as a mandatory complex
37 business case by the party whose pleading caused the amount in controversy
38 to equal or exceed five million dollars (\$5,000,000).

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

42 ~~Any party may designate a civil action or a petition for judicial review under G.S. 105~~
43 ~~241.16 as a mandatory complex business case by filing a Notice of Designation in the Superior~~
44 ~~Court in which the action has been filed and simultaneously serving the notice on each~~
45 ~~opposing party or counsel and on the Special Superior Court Judge for Complex Business~~
46 ~~Cases who is then the senior Business Court Judge. A copy of the notice shall also be sent~~
47 ~~contemporaneously by e-mail or facsimile transmission to the Chief Justice of the Supreme~~
48 ~~Court for approval of the designation of the action as a mandatory complex business case and~~
49 ~~assignment to a specific Business Court Judge.~~

50 (c) A party designating an action as a mandatory complex business case shall file a
51 Notice of Designation in the Superior Court in which the action has been filed, shall

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

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

- 11 (1) By the plaintiff, the third-party plaintiff, or the petitioner for judicial review
12 contemporaneously with the filing of the complaint, third-party complaint,
13 or the petition for judicial review in the action.
14 (2) By any intervenor when the intervenor files a motion for permission to
15 intervene in the action.
16 (3) By any defendant or any other party within 30 days of receipt of service of
17 the pleading seeking relief from the defendant or party.
18 (4) By any party whose pleading caused the amount in controversy computed in
19 accordance with G.S. 7A-243 to equal or exceed five million dollars
20 (\$5,000,000) contemporaneously with the filing of that pleading.

21 (e) Within 30 days after service of the Notice of Designation, any other party may, in
22 good faith, file and serve an opposition to the designation of the action as a mandatory complex
23 business case. Based on the opposition or ~~ex mero motu~~, on its own motion, the Business Court
24 Judge may determine that the action should not be designated as a mandatory complex business
25 case. If a party disagrees with the decision, the party may appeal to the Chief Justice of the
26 Supreme Court.

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

36 (g) If an action required by subsection (b) of this section to be designated as a
37 mandatory complex business case is not so designated, the Superior Court in which the action
38 has been filed shall by order entered sua sponte either dismiss the action without prejudice or
39 stay the action until it has been designated as a mandatory complex business case in accordance
40 with this section."

41 **SECTION 4.** G.S. 7A-305(a)(2) reads as rewritten:

42 "**§ 7A-305. Costs in civil actions.**

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

- 45 ...
46 (2) For support of the General Court of Justice, the sum of one hundred eighty
47 dollars (\$180.00) in the superior court and the sum of one hundred thirty
48 dollars (\$130.00) in the district court except that if the case is assigned to a
49 magistrate the sum shall be eighty dollars (\$80.00). If a case is assigned to a
50 special superior court judge as a complex business case under G.S. 7A-45.3,
51 upon assignment the party filing the notice of designation pursuant to

1 G.S. 7A-45.4 or the motion for complex business designation shall pay an
2 additional one thousand one hundred dollars ~~(\$1,000)~~ ~~(\$1,100)~~ for support of
3 the General Court of Justice; if a case is assigned to a special superior court
4 judge as a complex business case under G.S. 7A-45.3 by a court on its own
5 motion, upon assignment the plaintiff shall pay an additional one thousand
6 one hundred dollars ~~(\$1,000)~~ ~~(\$1,100)~~ for support of the General Court of
7 Justice. Sums collected under this subdivision shall be remitted to the State
8 Treasurer. The State Treasurer shall remit the sum of one dollar and fifty
9 cents (\$1.50) of each fee collected under this subdivision to the North
10 Carolina State Bar for the provision of services described in G.S. 7A-474.4,
11 and ninety-five cents (\$.95) of each fee collected under this subdivision to
12 the North Carolina State Bar for the provision of services described in
13 G.S. 7A-474.19."

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

15 "**§ 7A-343. Duties of Director.**

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

18 ...

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

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

35"

36 **SECTION 6.** Section 1 applies to appeals filed on or after October 1, 2014.
37 Sections 3 and 4 apply to actions commenced or petitions filed on or after October 1, 2014. The
38 remainder of this act is effective when it becomes law.