

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 606
Committee Substitute Favorable 5/8/89

Short Title: Appellate Procedure Update.

(Public)

Sponsors:

Referred to:

March 15, 1989

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW A DIRECT APPEAL TO THE SUPREME COURT FROM
2 CERTAIN BOARDS AND COMMISSIONS WHEN CERTAIN
3 CONSTITUTIONAL QUESTIONS HAVE ARISEN, TO UPDATE THE
4 PROCEDURE FOR APPELLATE REVIEW OF DECISIONS OF THE BOARD
5 OF MEDICAL EXAMINERS, AND TO MAKE CERTAIN POWERS OF
6 ATTORNEY DURABLE AS DEFINED IN G.S. 32A-8.
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8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 7A-31(a) reads as rewritten:

10 "(a) In any cause in which appeal is taken to the Court of Appeals, except a cause
11 appealed from the North Carolina Industrial Commission, the North Carolina State Bar
12 pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-345, the
13 Board of State Contract Appeals pursuant to G.S. 143-135.9, or the Commissioner of
14 Insurance pursuant to G.S. 58-9.4, or a motion for appropriate relief or valuation of
15 exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its discretion, on
16 motion of any party to the cause or on its own motion, certify the cause for review by
17 the Supreme Court, either before or after it has been determined by the Court of
18 Appeals. A cause appealed to the Court of Appeals from any of the administrative
19 bodies listed in the preceding sentence may be certified in similar fashion, but only after
20 determination of the cause in the Court of Appeals. The effect of such certification is to
21 transfer the cause from the Court of Appeals to the Supreme Court for review by the
22 Supreme Court. If the cause is certified for transfer to the Supreme Court before its
23 determination in the Court of Appeals, review is not had in the Court of Appeals but the

1 cause is forthwith transferred for review in the first instance by the Supreme Court. If
2 the cause is certified for transfer to the Supreme Court after its determination by the
3 Court of Appeals, the Supreme Court reviews the decision of the Court of Appeals.
4 Notwithstanding the foregoing provisions, if the appeal from any of the administrative
5 bodies listed in this section involves an issue that would give rise to an appeal of right to
6 the Supreme Court pursuant to G.S. 7A-30, the appeal may be certified for review by
7 the Supreme Court, in its discretion, prior to determination of the cause in the Court of
8 Appeals.

9 Except in motions within the purview of G.S. 7A-28, the State may move for
10 certification for review of any criminal cause, but only after determination of the cause
11 by the Court of Appeals."

12 Sec. 2. G.S. 90-14.11 reads as rewritten:

13 "**§ 90-14.11. Appeal to Supreme Court; Appeal; appeal bond.**

14 Any party to the review proceeding, including the Board, may appeal ~~to the Supreme~~
15 ~~Court~~ from the decision of the superior court under rules of procedure applicable in
16 other civil cases. No appeal bond shall be required of the Board. The appealing party
17 may apply to the superior court for a stay of that court's decision or a stay of the Board's
18 decision, whichever shall be appropriate, pending the outcome of the ~~appeal to the~~
19 ~~Supreme Court.~~ appeal."

20 Sec. 3. G.S. 32A-14(a) reads as rewritten:

21 "(a) A power of attorney executed prior to October 1, 1988, pursuant to G.S. 47-
22 115.1 as it existed prior to October 1, 1983, shall be deemed to be a durable power of
23 attorney as defined in G.S. 32A-8."

24 Sec. 4. Section 1 of this act is effective upon ratification and applies to
25 appeals docketed on or after that date. Section 2 of this act shall become effective
26 October 1, 1989, and shall apply to appeals filed on or after that date. Section 3 of this
27 act is effective upon ratification.