

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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HOUSE DRH50226-MD-35A (02/02)

Short Title: Use of Misappropriated IT an Unfair Practice. (Public)

Sponsors: Representatives Steen and T. Moore (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE MANUFACTURE OF ANY ARTICLE OR PRODUCT WHILE USING
3 STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY AN UNFAIR
4 ACT.

5 Whereas, manufacturers are a vital source of jobs and economic growth in the State
6 of North Carolina; and

7 Whereas, law-abiding manufacturers in this State suffer lost sales, market share, and
8 jobs when they are forced to compete against companies that use stolen or misappropriated
9 information technology to reduce production costs and gain a competitive edge; and

10 Whereas, the theft of American information technology is particularly rampant in
11 foreign markets, reaching as high as 90% in some countries; and

12 Whereas, IT theft costs the U.S. economy thousands of jobs and billions of dollars
13 in economic growth; and

14 Whereas, the use of stolen or misappropriated information technology unfairly
15 lowers manufacturers' costs of production by tens if not hundreds of thousands of dollars; and

16 Whereas, manufacturers that knowingly use significant amounts of stolen or
17 misappropriated information technology to reduce their costs should not be allowed to benefit
18 from their illegal acts; and

19 Whereas, existing laws relating to unfair trade practices do not adequately address
20 the harms that occur when manufacturers use stolen or misappropriated information technology
21 to gain an unfair competitive advantage over companies that play by the rules; and

22 Whereas, it is the purpose of this act to enable effective recourse against
23 manufacturers that obtain an unlawful competitive advantage by using stolen or
24 misappropriated information technology to make goods; and

25 Whereas, to accomplish this purpose, law-abiding manufacturers who have suffered
26 economic harm from a directly competing manufacturer's sale of products made using stolen or
27 misappropriated information technology will be allowed to pursue a cause of action against the
28 company that used the stolen or misappropriated information technology; and

29 Whereas, the remedies available to the law-abiding manufacturer in such cases are
30 limited to ensure that the relief obtained is proportional to the harm; and

31 Whereas, to safeguard against the possibility of frivolous litigation or other negative
32 consequences, this act also provides carefully circumscribed procedures and exemptions
33 designed to protect businesses that make good-faith efforts to act in accordance with their legal
34 responsibilities; and



1 misappropriated items used in the business operations of the person alleged
2 to have violated G.S. 75-48.1(a).

3 (7) Stolen or misappropriated information technology. – Hardware or software
4 that a person acquired, appropriated, or used without the authorization of the
5 owner of the information technology or the owner's authorized licensee in
6 violation of applicable law. However, the term does not include situations in
7 which the hardware or software alleged to have been stolen or
8 misappropriated was not available for retail purchase on a standalone basis
9 at or before the time it was acquired, appropriated, or used by that person.
10 For purposes of this definition, information technology is used in a person's
11 business operations if the person uses such technology in the manufacture,
12 distribution, marketing, or sales of the articles or products subject to
13 G.S. 75-48.1(a).

14 **"§ 75-48.1. Manufacturing while using stolen or misappropriated information technology**
15 **an unfair act; relation to other laws.**

16 (a) Unfair Act. – Any person who manufactures any article or product while using
17 stolen or misappropriated information technology in its business operations after notice and
18 opportunity to cure as provided in G.S. 75-48.2 and, with respect to remedies sought under
19 G.S. 75-48.3(f) or G.S. 75-48.5, causes a material competitive injury as a result of such use of
20 stolen or misappropriated information technology shall be deemed to engage in an unfair act
21 where such article or product is sold or offered for sale in this State, either separately or as a
22 component of another article or product, and in competition with an article or product sold or
23 offered for sale in this State that was manufactured without violating this subsection. Any
24 person who engages in such unfair act, and any articles or products manufactured by such
25 person in violation of this subsection, shall be subject to the liabilities and remedial provisions
26 of this Article in an action by the Attorney General or any injured person described in
27 G.S. 75-48.3(e), except as provided in subsection (b) of this section and G.S. 75-48.2, 75-48.3,
28 75-48.4, 75-48.5, and 75-48.6.

29 (b) Exceptions. – No action may be brought under this Article, and no liability shall
30 result, if any of the following are true:

31 (1) The end article or end product sold or offered for sale in this State and
32 alleged to violate subsection (a) of this section is any of the following:

33 a. A copyrightable end product.

34 b. Merchandise manufactured by or on behalf of, or pursuant to a
35 license from, a copyright owner and which displays or embodies a
36 name, character, artwork, or other indicia of or from a work that falls
37 within sub-subdivision a. of this subdivision or merchandise
38 manufactured by or on behalf of, or pursuant to a license from, a
39 copyright or trademark owner and which displays or embodies a
40 name, character, artwork, or other indicia of or from a theme park,
41 theme park attraction, or other facility associated with a theme park.

42 c. Packaging, carrier media, or promotional or advertising materials for
43 any end article, end product, or merchandise that falls within sub-
44 subdivision a. or b. of this subdivision.

45 (2) The allegation that a particular technology constitutes stolen or
46 misappropriated information technology is based on either of the following:

47 a. A claim that the information technology or its use infringes a patent
48 or misappropriates a trade secret under applicable law or that could
49 be brought under any provision of Title 35 of the United States Code.

50 b. A claim that the defendant's use of the information technology
51 violates the terms of a license that allows users to modify and

1 redistribute any source code associated with the technology free of
2 charge.

- 3 (3) The allegation is based on a claim that the person violated subsection (a) of
4 this section by aiding, abetting, facilitating, or assisting someone else to
5 acquire, appropriate, use, sell, or offer to sell, or by providing someone else
6 with access to, information technology without authorization of the owner of
7 such information technology or the owner's authorized licensee in violation
8 of applicable law.

9 **"§ 75-48.2. Notice and opportunity to cure required prior to filing of action.**

10 (a) Notice and Opportunity to Cure Required. – No action may be brought under
11 G.S. 75-48.1(a) unless the person subject to G.S. 75-48.1(a) received written notice of the
12 alleged use of the stolen or misappropriated information technology from the owner or
13 exclusive licensee of the information technology or the owner's agent and the person did one of
14 the following:

- 15 (1) Failed to establish that its use of the information technology in question did
16 not violate G.S. 75-48.1(a).
17 (2) Failed, within 90 days after receiving such notice, to cease use of the owner's
18 stolen or misappropriated information technology; provided, however, that if
19 the person commences and thereafter proceeds diligently to replace such
20 information technology with information technology whose use would not
21 violate G.S. 75-48.1(a), such period shall be extended for an additional
22 period of 90 days, not to exceed 180 days total.

23 (b) Contents of Notice. – To satisfy the requirements of this section, a written notice
24 must, under penalty of perjury, do all of the following:

- 25 (1) Identify the stolen or misappropriated information technology.
26 (2) Identify the lawful owner or exclusive licensee of the information
27 technology.
28 (3) Identify the applicable law the person is alleged to be violating and state that
29 the notifier has a reasonable belief that the person has acquired,
30 appropriated, or used the information technology in question without
31 authorization of the lawful owner or the owner's authorized licensee in
32 violation of the applicable law.
33 (4) To the extent known, state the manner in which such information technology
34 is being used by the defendant.
35 (5) State the articles or products to which such information technology relates.
36 (6) Specify the basis and the particular evidence upon which the notifier bases
37 such allegation.

38 (c) Certification Requirement. – The written notification shall state, under penalty of
39 perjury, that, after a reasonable and good-faith investigation, the information in the notice is
40 accurate based on the notifier's reasonable knowledge, information, and belief.

41 (d) The information technology owner or its agent may extend any period described in
42 this section.

43 **"§ 75-48.3. Filing of action; remedies; attorneys' fees; affirmative defense.**

44 (a) Filing of Action. – No earlier than 90 days after the provision of notice in
45 accordance with G.S. 75-48.2, the Attorney General in the name of the State, or any person
46 described in subsection (e) of this section, may bring an action against any person who is
47 subject to G.S. 75-48.1(a).

48 (b) Remedies. – In any suit instituted pursuant to subsection (a) of this section, in which
49 the defendant is found by the court to have violated G.S. 75-48.1(a), the court may do any or all
50 of the following:

- 1 (1) Enjoin violations of G.S. 75-48.1(a), including by enjoining the defendant
2 from selling or offering to sell in this State articles or products that are
3 subject to G.S. 75-48.1(a), except as provided in subsection (f) of this
4 section; provided that no such injunction shall encompass articles or
5 products to be provided to a third party that establishes that such third party
6 has satisfied one or more of the affirmative defenses set forth in
7 G.S. 75-48.6(a) with respect to the manufacturer alleged to have violated
8 G.S. 75-48.1(a).
- 9 (2) Award actual direct or statutory damages to the plaintiff in an amount equal
10 to the greater of the following:
- 11 a. Actual direct damages, which may be imposed only against the
12 person who G.S. 75-48.1(a).
- 13 b. Statutory damages of no more than the retail price of the stolen or
14 misappropriated technology, which may be imposed only against the
15 person who violated G.S. 75-48.1(a).
- 16 (3) Award enhanced damages to the plaintiff in an amount equal to up to treble
17 the amount of damages authorized under subdivision (2) of this subsection
18 where the court finds that the defendant's use of the stolen or
19 misappropriated information technology was willful. Enhanced damages
20 under this subdivision shall be imposed only against the person found to
21 have violated G.S. 75-48.1(a).
- 22 (4) In the event the person alleged to have violated G.S. 75-48.1(a) has been
23 subject to a final judgment or has entered into a final settlement, or any
24 products manufactured by such person and alleged to violate G.S. 75-48.1(a)
25 have been the subject of an injunction or attachment order, in any federal or
26 state court in this State or any other state, arising out of the same theft or
27 misappropriation of information technology, the court shall dismiss the
28 action with prejudice. If such person is a defendant in an ongoing action, or
29 any products manufactured by such person and alleged to violate
30 G.S. 75-48.1(a) are the subject of an ongoing injunction or attachment order,
31 in any federal or state court in this State or any other state, arising out of the
32 same theft or misappropriation of information technology, the court shall
33 stay the action against such person pending resolution of the other action. In
34 the event the other action results in a final judgment or final settlement, the
35 court shall dismiss the action with prejudice against the person. Dismissals
36 under this section shall be res judicata to actions filed against the person
37 alleged to have violated G.S. 75-48.1(a) arising out of the same theft or
38 misappropriation of information technology.
- 39 (c) Damages Against a Third Party. –
- 40 (1) After determination by the court that a person has violated G.S. 75-48.1(a)
41 and entry of a judgment against the person for violating G.S. 75-48.1(a), the
42 Attorney General, or a person described in subsection (e) of this section,
43 may add to the action a claim for actual direct damages against a third party
44 who sells or offers to sell in this State products made by that person in
45 violation of G.S. 75-48.1(a), subject to the provisions of G.S. 75-48.6;
46 provided, however, that damages may be imposed against a third party only
47 if all of the following are true:
- 48 a. The third party's agent for service of process properly was served
49 with a written notice sent to the person alleged to have violated
50 G.S. 75-48.1(a) that satisfies the requirements of G.S. 75-48.2 at least
51 90 days prior to the entry of the judgment.

- 1 b. The person who violated G.S. 75-48.1(a) did not make an appearance
2 or does not have sufficient attachable assets to satisfy a judgment
3 against the person.
- 4 c. Such person either manufactured the final product or produced a
5 component equal to thirty percent (30%) or more of the value of the
6 final product.
- 7 d. Such person has a direct contractual relationship with the third party
8 respecting the manufacture of such final product or component.
- 9 e. The third party has not been subject to a final judgment or entered
10 into a final settlement in any federal or state court in this State or any
11 other state arising out of the same theft or misappropriation of
12 information technology; provided, however, that in the event the
13 third party is a party to an ongoing suit for damages, or has entered
14 an appearance as an interested third party in proceedings in rem, in
15 any federal or state court in this State or any other state arising out of
16 the same theft or misappropriation of information technology, the
17 court shall stay the action against the third party pending resolution
18 of the other action. In the event the other action results in a final
19 judgment, the court shall dismiss the action with prejudice against
20 the third party and dismiss any in rem action as to any articles or
21 products manufactured for such third party or that have been or are to
22 be supplied to such third party. Dismissals under this section shall be
23 res judicata to actions filed against the person alleged to have
24 violated G.S. 75-48.1(a) arising out of the same theft or
25 misappropriation of information technology.
- 26 (2) An award of damages against such third party pursuant to subdivision (c)(1)
27 of this section shall be the lesser of the retail price of the stolen or
28 misappropriated information technology at issue or two hundred fifty
29 thousand dollars (\$250,000.00), less any amounts recovered from the person
30 adjudicated to have violated G.S. 75-48.1(a), and subdivision (b)(3) of this
31 section shall not apply to such award or recovery against such third party.
- 32 (d) Attorneys' Fees. – In an action under this Article, the court may also do any or all of
33 the following:
- 34 (1) With respect to an award under subsection (b) of this section only, award
35 costs and reasonable attorneys' fees to (i) a prevailing plaintiff in any action
36 filed by an injured person under G.S. 75-48.1(a) or (ii) a prevailing
37 defendant in actions brought by an allegedly injured person.
- 38 (2) With respect to an action under subsection (c) of this section brought by a
39 private plaintiff only, award costs and reasonable attorneys' fees to a third
40 party for all litigation expenses (including, without limitation, discovery
41 expenses) incurred by that party if it prevails on the requirement set forth in
42 sub-subdivision (c)(1)c. of this section or who qualifies for an affirmative
43 defense under G.S. 75-48.6; provided, however, in a case in which the third
44 party received a copy of the notification described in sub-subdivision
45 (c)(1)a. of this section at least 90 days before the filing of the action under
46 subsection (c) of this section, that with respect to a third party's reliance on
47 the affirmative defenses set forth in G.S. 75-48.6(a)(3) and
48 G.S. 75-48.6(a)(4), the court may award costs and reasonable attorneys' fees
49 only if all of the conduct on which the affirmative defense is based was

1 undertaken by the third party, and the third party notified the plaintiff of
2 such conduct, prior to the end of such 90-day period.

3 (e) Injured Persons Defined. – A person shall be deemed to have been injured by the
4 sale or offer for sale of a directly competing article or product subject to G.S. 75-48.1(a) if the
5 person establishes by a preponderance of the evidence that all of the following are true:

6 (1) The person manufactures articles or products that are sold or offered for sale
7 in this State in direct competition with articles or products that are subject to
8 G.S. 75-48.1(a).

9 (2) The person's articles or products were not manufactured using stolen or
10 misappropriated information technology of the owner of the information
11 technology.

12 (3) The person suffered economic harm, which may be shown by evidence that
13 the retail price of the stolen or misappropriated information technology was
14 twenty thousand dollars (\$20,000) or more.

15 (4) If the person is proceeding in rem or seeks injunctive relief, the person suffered
16 material competitive injury as a result of the violation of G.S. 75-48.1(a).

17 (f) Enforcement of Injunctive Relief. –

18 (1) If the court determines that a person found to have violated G.S. 75-48.1(a)
19 lacks sufficient attachable assets in this State to satisfy a judgment rendered
20 against it, the court may enjoin the sale or offering for sale in this State of
21 any articles or products subject to G.S. 75-48.1(a), except as provided in
22 G.S. 75-48.4.

23 (2) To the extent that an article or product subject to G.S. 75-48.1(a) is an
24 essential component of a third party's article or product, the court shall deny
25 injunctive relief as to such essential component, provided that the third party
26 has undertaken good-faith efforts within the third party's rights under its
27 applicable contract with such manufacturer to direct the manufacturer of the
28 essential component to cease the theft or misappropriation of information
29 technology in violation of G.S. 75-48.1(a), which may be satisfied, without
30 limitation, by the third party issuing a written directive to the manufacturer
31 demanding that it cease such theft or misappropriation and demanding that
32 the manufacturer provide the third party with copies of invoices, purchase
33 orders, licenses, or other verification of lawful use of the information
34 technology at issue.

35 (g) The court shall determine whether a cure period longer than the period reflected in
36 G.S. 75-48.2 would be reasonable given the nature of the use of the information technology that
37 is the subject of the action and the time reasonably necessary either to bring such use into
38 compliance with applicable law or to replace the information technology with information
39 technology that would not violate G.S. 75-48.1(a). If the court deems that a longer cure period
40 would be reasonable, then the action shall be stayed until the end of that longer cure period. If
41 by the end of that longer cure period, the defendant has established that its use of the
42 information technology in question did not violate G.S. 75-48.1(a), or the defendant ceased use
43 of the stolen or misappropriated information technology, then the action shall be dismissed.

44 **§ 75-48.4. Claims against third-party articles or products.**

45 No injunction may issue against a person other than the person adjudicated to have violated
46 G.S. 75-48.1(a), and no attachment order may issue against articles or products other than
47 articles or products in which the person alleged to violate G.S. 75-48.1(a) holds title. A person
48 other than the person alleged to violate G.S. 75-48.1(a) includes any person other than the
49 actual manufacturer who contracts with or otherwise engages another person to develop,
50 manufacture, produce, market, distribute, advertise, or assemble an article or product alleged to
51 violate G.S. 75-48.1(a).

"§ 75-48.5. In rem jurisdiction.

(a) In a case in which the court is unable to obtain personal jurisdiction over a person subject to G.S. 75-48.1(a), the court may proceed in rem against any articles or products subject to G.S. 75-48.1(a) sold or offered for sale in this State in which the person alleged to have violated G.S. 75-48.1(a) holds title. Except as provided in G.S. 75-48.4 and subsections (b) through (d) of this section, all such articles or products shall be subject to attachment at or after the time of filing a complaint, regardless of the availability or amount of any monetary judgment.

(b) At least 90 days prior to the enforcement of an attachment order against articles or products pursuant to subsection (a) of this section, the court shall notify any person in possession of such articles or products of the pending attachment order. Prior to the expiration of such 90-day period, any person for whom the articles or products were manufactured, or to whom such articles or products have been or are to be supplied, pursuant to an existing contract or purchase order, may do either of the following:

(1) Establish that the person has satisfied one or more of the affirmative defenses set forth in G.S. 75-48.6(a) with respect to the manufacturer alleged to have violated G.S. 75-48.1(a), in which case the attachment order shall be dissolved only with respect to those articles or products that were manufactured for such person, or have been or are to be supplied to such person, pursuant to an existing contract or purchase order.

(2) Post a bond with the court equal to the retail price of the allegedly stolen or misappropriated information technology or twenty-five thousand dollars (\$25,000), whichever is less, in which case the court shall stay enforcement of the attachment order against such articles or products and shall proceed on the basis of its jurisdiction over the bond. The person posting the bond shall recover the full amount of such bond, plus interest, after the issuance of a final judgment.

(c) In the event the person posting the bond pursuant to subdivision (b)(2) of this section is entitled to claim an affirmative defense in G.S. 75-48.6, and that person establishes with the court that it is entitled to any such affirmative defense, the court shall award costs and reasonable attorneys' fees to the person posting the bond and against the plaintiff in the event the plaintiff proceeds with an action pursuant to G.S. 75-48.3(c) against the person posting the bond.

(d) In the event that the court does not provide notification as described in subsection (b) of this section, the court, upon motion of any third party, shall stay the enforcement of the attachment order for 90 days as to articles or products manufactured for such third party, or that have been or are to be supplied to such third party, pursuant to an existing contract or purchase order, during which 90-day period the third party may avail itself of the options set forth in subdivision (b)(1) and (b)(2) of this section.

"§ 75-48.6. Affirmative defenses for third parties.

(a) A court may not award damages against a third party pursuant to G.S. 75-48.3(c) where that party, after having been afforded reasonable notice of at least 90 days by proper service upon such party's agent for service of process and opportunity to plead any of the affirmative defenses set forth below, establishes by a preponderance of the evidence that any of the following are true:

(1) The third party is the end consumer or end user of an article or product that is subject to G.S. 75-48.1(a), or acquired the article or product after its sale to an end consumer or end user.

(2) The person is a business with annual revenues that do not exceed fifty million dollars (\$50,000,000).

(3) The person acquired the articles or products:

- 1 a. And had either (i) a code of conduct or other written document
2 governing the person's commercial relationships with the
3 manufacturer adjudicated to have violated G.S. 75-48.1(a) and which
4 includes commitments, such as general commitments to comply with
5 applicable laws, that prohibit use of the stolen or misappropriated
6 information technology by such manufacturer or (ii) written
7 assurances from the manufacturer of such articles or products that
8 such articles or products, to the manufacturer's reasonable
9 knowledge, were manufactured without the use of stolen or
10 misappropriated information technology in the manufacturer's
11 business operations. Provided, however, with respect to both (i) and
12 (ii) of this sub-subdivision, that within 180 days of receiving written
13 notice of the judgment against the manufacturer for violation of
14 G.S. 75-48.1(a) and a copy of a written notice that satisfies the
15 requirements of G.S. 75-48.2, the person undertakes commercially
16 reasonable efforts to do any of the following:
17 1. Exchange written correspondence confirming that such
18 manufacturer is not using such stolen or misappropriated
19 information technology in violation of G.S. 75-48.1(a), which
20 may be satisfied, without limitation, by obtaining written
21 assurances from the manufacturer accompanied by copies of
22 invoices, purchase orders, licenses, or other verification of
23 lawful use of the information technology at issue;
24 2. Direct the manufacturer to cease the theft or
25 misappropriation, which may be satisfied, without limitation,
26 by the third party issuing a written directive to the
27 manufacturer demanding that it cease such theft or
28 misappropriation and demanding that the manufacturer
29 provide the third party with copies of invoices, purchase
30 orders, licenses, or other verification of lawful use of the
31 information technology at issue; and for purposes of
32 clarification, the third party need take no additional action to
33 fully avail itself of this affirmative defense; or
34 3. In a case in which the manufacturer has failed to cease such
35 theft or misappropriation within such 180-day period, and the
36 third party has not fulfilled either sub-sub-subdivision 1. or 2.
37 of this sub-subdivision, cease the future acquisition of such
38 articles or products from the manufacturer during the period
39 that such manufacturer continues to engage in such theft or
40 misappropriation subject to G.S. 75-48.1(a) where doing so
41 would not constitute a breach of an agreement between the
42 person and such manufacturer for the manufacture of the
43 articles or products in question that was entered into on or
44 before 180 days after the effective date of this Article.
45 b. Pursuant to an agreement between the person and a manufacturer for
46 the manufacture of the articles or products in question that was
47 entered into before 180 days after the effective date of this Article.
48 Provided, however, that within 180 days of receiving written notice
49 of the judgment against the manufacturer for violation of
50 G.S. 75-48.1(a) and a copy of a written notice that satisfies the

1 requirements of G.S. 75-48.2, the person undertakes commercially
2 reasonable efforts to do any of the following:

- 3 1. Obtain from such manufacturer written assurances that such
4 manufacturer is not using such stolen or misappropriated
5 information technology in violation of G.S. 75-48.1(a), which
6 may be satisfied, without limitation, by obtaining written
7 assurances from the manufacturer accompanied by copies of
8 invoices, purchase orders, licenses, or other verification of
9 lawful use of the information technology at issue.
- 10 2. Direct the manufacturer to cease such theft or
11 misappropriation, which may be satisfied, without limitation,
12 by the third party issuing a written directive to the
13 manufacturer demanding that it cease such theft or
14 misappropriation and demanding that the manufacturer
15 provide the third party with copies of invoices, purchase
16 orders, licenses, or other verification of lawful use of the
17 information technology at issue; and for purposes of
18 clarification, the third party need take no additional action to
19 fully avail itself of this affirmative defense.
- 20 3. In a case in which the manufacturer has failed to cease such
21 theft or misappropriation within such 180-day period, and the
22 third party has not fulfilled either sub-sub-subdivision 1. or 2.
23 of this sub-subdivision, cease the future acquisition of such
24 articles or products from such manufacturer during the period
25 that such manufacturer continues to engage in such theft or
26 misappropriation subject to G.S. 75-48.1(a) where doing so
27 would not constitute a breach of such agreement.

28 (4) The person has made commercially reasonable efforts to implement
29 practices and procedures to require its direct manufacturers, in
30 manufacturing articles or products for such person, not to use stolen or
31 misappropriated information technology in violation of G.S. 75-48.1(a). A
32 person may satisfy this subdivision by doing any of the following:

- 33 a. Adopting and undertaking commercially reasonable efforts to
34 implement a code of conduct or similar written requirements, which
35 are applicable to the person's direct manufacturers, that prohibit use
36 of stolen or misappropriated information technology by such
37 manufacturer, subject to a right of audit, and such person either (i)
38 has a practice of auditing its direct manufacturers on a periodic basis
39 in accordance with generally accepted industry standards or (ii)
40 requires in its agreements with its direct manufacturers that they
41 submit to audits by a third party, which may include a third-party
42 association of businesses representing the owner of the stolen or
43 misappropriated intellectual property, and further provides that a
44 failure to remedy any deficiencies found in such audit that constitute
45 a violation of the applicable law of the jurisdiction where the
46 deficiency occurred shall constitute a breach of the contract, subject
47 to cure within a reasonable period of time.
- 48 b. Adopting and undertaking commercially reasonable efforts to
49 implement a code of conduct or similar written requirements, which
50 are applicable to the person's direct manufacturers, that prohibit use
51 of stolen or misappropriated information technology by such

1 manufacturer, and the person undertakes practices and procedures to
2 address compliance with the prohibition against the use of the stolen
3 or misappropriated information technology in accordance with the
4 applicable code of conduct or written requirements.

5 (5) The person does not have a contractual relationship with the person alleged
6 to have violated G.S. 75-48.1(a) respecting the manufacture of the articles or
7 products alleged to have been manufactured in violation of G.S. 75-48.1(a).

8 (b) A third party shall have the opportunity to be heard regarding whether an article or
9 product is an essential component provided or to be provided to such third party and shall have
10 the right to file a motion to dismiss any action brought against it under G.S. 75-48.3(c).

11 (c) The court shall not enforce any award for damages against such third party until
12 after the court has ruled on that party's claim of eligibility for any of the affirmative defenses
13 set out in subsection (a) of this section, and prior to such ruling may allow discovery, in an
14 action under G.S. 75-48.3(c), only on the particular defenses raised by the third party.

15 (d) The court shall allow discovery against a third party on an issue only after all
16 discovery on that issue between the parties has been completed and only if the evidence
17 produced as a result of such discovery does not resolve an issue of material dispute between the
18 parties.

19 (e) Any confidential or otherwise sensitive information submitted by a party pursuant to
20 this section shall be subject to a protective order.

21 **"§ 75-48.7. Other laws not applicable.**

22 G.S. 75-1 to G.S. 75-16.2 do not apply to this Article. The remedies provided under this
23 Article are the exclusive remedies for the parties.

24 **"§ 75-48.8. Severability.**

25 If any subsection, clause, sentence, paragraph, or part of this Article shall be adjudged by
26 any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or
27 invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,
28 paragraph, section, or part thereof directly involved in the controversy in which the judgment
29 shall have been rendered."

30 **SECTION 2.** This act becomes effective 90 days after it becomes law, except that
31 no award of damages against a third party pursuant to G.S. 75-48.3(c), as enacted by this act,
32 shall be enforced until 18 months have elapsed from the date this act becomes law.