

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 578

Short Title: Eliminate Mandatory Retirement for Judges.

(Public)

Sponsors: Representative Moore.

Referred to: Judiciary II.

March 20, 2003

A BILL TO BE ENTITLED
AN ACT TO ELIMINATE THE MANDATORY RETIREMENT AGE FOR JUDGES
AND JUSTICES OF THE GENERAL COURT OF JUSTICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-4.20, 7A-39.2, 7A-39.13, 7A-51, and 7A-57 are repealed.

SECTION 2. G.S. 7A-39.3(a) reads as rewritten:

"(a) Justices of the Supreme Court and judges of the Court of Appeals who ~~have not reached the mandatory retirement age specified in G.S. 7A-4.20, but who~~ have retired under the provisions of former G.S. 7A-39.2, or under the Uniform Consolidated Judicial Retirement Act after having completed 12 years of creditable service, may apply as provided in G.S. 7A-39.6 to become emergency justices or judges and upon being commissioned as an emergency justice or emergency judge shall be subject to temporary recall to active service in place of a justice or judge who is temporarily incapacitated as provided in G.S. 7A-39.5."

SECTION 3. G.S. 7A-39.14(a) reads as rewritten:

"(a) In addition to the authority granted to the Chief Justice under G.S. 7A-39.5 to recall emergency justices ~~and under G.S. 7A-39.13 to recall retired justices~~, the Chief Justice may recall not more than one retired or emergency justice or retired emergency judge of the Court of Appeals, ~~including an emergency justice or judge whose commission has expired because he has reached the mandatory retirement age~~, Appeals in the following circumstances:

- (1) If a vacancy exists on the Supreme Court, he may recall an emergency or retired justice to serve on that court until the vacancy is filled in accordance with law.
- (2) If a vacancy exists on the Court of Appeals, he may recall an emergency or retired justice of the Supreme Court or judge of the Court of Appeals to serve on the Court of Appeals until the vacancy is filled in accordance with law.

1 (3) With the concurrence of a majority of the Supreme Court, he may
2 recall an emergency or retired justice to serve on the Supreme Court in
3 place of a sitting justice who, as determined by the Chief Justice, is
4 temporarily unable to perform all of the duties of his office.

5 (4) With the concurrence of a majority of the Supreme Court, he may
6 recall an emergency or retired justice of the Supreme Court or judge of
7 the Court of Appeals to serve on the Court of Appeals in place of a
8 sitting judge who, as determined by the Chief Justice, is temporarily
9 unable to perform all of the duties of his office."

10 **SECTION 4.** G.S. 7A-39.15(a) reads as rewritten:

11 "(a) A retired justice or judge of the Appellate Division of the General Court of
12 Justice is eligible to be appointed as an emergency recall judge of the Court of Appeals
13 under the following circumstances:

14 (1) The justice or judge has retired under the provisions of the
15 Consolidated Judicial Retirement Act, Article 4 of Chapter 135 of the
16 General Statutes, or is eligible to receive a retirement allowance under
17 that act;

18 ~~(2) The justice or judge has not reached the mandatory retirement age
19 specified in G.S. 7A-4.20;~~

20 (3) The justice or judge has served a total of at least five years as a judge
21 or justice of the General Court of Justice, provided that at least six
22 months was served in the Appellate Division, whether or not otherwise
23 eligible to serve as an emergency justice or judge of the Appellate
24 Division of the General Court of Justice;

25 (4) The judicial service of the justice or judge ended within the preceding
26 15 years; and

27 (5) The justice or judge has applied to the Governor for appointment as an
28 emergency recall judge of the Court of Appeals in the same manner as
29 is provided for application in G.S. 7A-53. If the Governor is satisfied
30 that the applicant meets the requirements of this section and is
31 physically and mentally able to perform the duties of a judge of the
32 Court of Appeals, the Governor shall issue a commission appointing
33 the applicant as an emergency recall judge of the Court of Appeals
34 ~~until the applicant reaches the mandatory retirement age for judges of
35 the Court of Appeals specified in G.S. 7A-4.20. Appeals.~~

36 ~~Any former justice or judge of the Appellate Division of the General Court of Justice
37 who otherwise meets the requirements of this section to be appointed an emergency
38 recall judge of the Court of Appeals, but who has already reached the mandatory
39 retirement age for judges of the Court of Appeals set forth in G.S. 7A-4.20, may apply
40 to the Governor to be appointed as an emergency recall judge of the Court of Appeals as
41 provided in this section. If the Governor issues a commission to the applicant, the
42 retired justice or judge is subject to recall as an emergency recall judge of the Court of
43 Appeals as provided in this section."~~

44 **SECTION 5.** G.S. 7A-45.2 reads as rewritten:

1 **"§ 7A-45.2. Emergency special judges of the superior court; qualifications,**
2 **appointment, removal, and authority.**

3 (a) Any justice or judge of the appellate division of the General Court of Justice
4 who:

5 (1) Retires under the provisions of the Consolidated Judicial Retirement
6 Act, Article 4 of Chapter 135 of the General Statutes, or who is
7 eligible to receive a retirement allowance under that act;

8 (2) ~~Has not reached the mandatory retirement age specified in G.S.~~
9 ~~7A-4.20;~~

10 (3) Has served at least five years as a superior court judge or five years as
11 a justice or judge of the appellate division of the General Court of
12 Justice, or any combination thereof, whether or not eligible to serve as
13 an emergency justice or judge of the appellate division of the General
14 Court of Justice; and

15 (4) Whose judicial service ended within the preceding 10 years;

16 may apply to the Governor for appointment as an emergency special superior court
17 judge in the same manner as is provided for application as an emergency superior court
18 judge in G.S. 7A-53. If the Governor is satisfied that the applicant meets the
19 requirements of this section and is physically and mentally able to perform the duties of
20 a superior court judge, the Governor shall issue a commission appointing the applicant
21 as an emergency special superior court judge ~~until the applicant reaches the mandatory~~
22 ~~retirement age for superior court judges specified in G.S. 7A-4.20.~~ judge.

23 (b) Any emergency special superior court judge appointed as provided in this
24 section shall:

25 (1) Have the same powers and duties, when duly assigned to hold court, as
26 provided for an emergency superior court judge by G.S. 7A-48;

27 (2) Be subject to assignment in the same manner as provided for an
28 emergency superior court judge by G.S. 7A-46;

29 (3) Receive the same compensation, expenses, and allowances, when
30 assigned to hold court, as an emergency superior court judge as
31 provided by G.S. 7A-52(b);

32 (4) Be subject to the provisions and requirements of the Canons of Judicial
33 Conduct; and

34 (5) Not engage in the practice of law during any period for which the
35 emergency special superior court judgeship is commissioned.
36 However, this subdivision shall not be construed to prohibit an
37 emergency special superior court judge appointed pursuant to this
38 section from serving as a referee, arbitrator, or mediator, during
39 service as an emergency special superior court judge when the service
40 does not conflict with or interfere with the emergency special superior
41 court judge's judicial service in emergency status.

42 (c) ~~Upon reaching mandatory retirement age for superior court judges as set forth~~
43 ~~in G.S. 7A-4.20, any emergency special superior court judge appointed pursuant to this~~
44 ~~section, whose commission has expired, may be recalled as a recalled emergency~~

1 special superior court judge to preside over any regular or special session of the superior
2 court under the following circumstances:

- 3 (1) ~~The judge shall consent to the recall;~~
- 4 (2) ~~The Chief Justice may order the recall;~~
- 5 (3) ~~Prior to ordering recall, the Chief Justice shall be satisfied that the~~
6 ~~recalled judge is capable of efficiently and promptly discharging the~~
7 ~~duties of the office to which recalled;~~
- 8 (4) ~~Jurisdiction of a recalled emergency special superior court judge is as~~
9 ~~set forth in G.S. 7A-48;~~
- 10 (5) ~~Orders of recall and assignment shall be in writing and entered upon~~
11 ~~the minutes of the court to which assigned; and~~
- 12 (6) ~~Compensation, expenses, and allowances of recalled emergency~~
13 ~~special superior court judges are the same as for recalled emergency~~
14 ~~superior court judges under G.S. 7A-52(b).~~

15 (d) ~~Any former justice or judge of the appellate division of the General Court of~~
16 ~~Justice who otherwise meets the requirements of subsection (a) of this section to be~~
17 ~~appointed an emergency special superior court judge but has already reached the~~
18 ~~mandatory retirement age for superior court judges set forth in G.S. 7A-4.20 on~~
19 ~~retirement may, in lieu of serving as an emergency judge of the court from which he~~
20 ~~retired, apply to the Governor to be appointed as an emergency special superior court~~
21 ~~judge as provided in this section. If the Governor issues a commission to the applicant,~~
22 ~~the retired justice or judge is subject to recall as an emergency special superior court~~
23 ~~judge as provided in subsection (c) of this section.~~

24 (e) No justice or judge appointed as an emergency special superior court judge or
25 subject to recall as provided in this section shall, during the period so appointed or
26 subject to recall, contemporaneously serve as an emergency justice or judge of the
27 appellate division of the General Court of Justice."

28 **SECTION 6.** G.S. 7A-52(a) reads as rewritten:

29 "(a) Judges of the district court and judges of the superior court ~~who have not~~
30 ~~reached the mandatory retirement age specified in G.S. 7A-4.20, but~~ who have retired
31 under the provisions of former G.S. 7A-51, or under the Uniform Consolidated Judicial
32 Retirement Act after having completed five years of creditable service, may apply as
33 provided in G.S. 7A-53 to become emergency judges of the court from which they
34 retired. The Chief Justice of the Supreme Court may order any emergency judge of the
35 district or superior court who, in his opinion, is competent to perform the duties of a
36 judge of the court from which such judge retired, to hold regular or special sessions of
37 such court, as needed. Order of assignment shall be in writing and entered upon the
38 minutes of the court to which such emergency judge is assigned."

39 **SECTION 7.** This act becomes effective July 1, 2003.