

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 118
Judiciary I (Civil) Committee Substitute Adopted 4/3/07

Short Title: Removal of Unqualified Judges and DAs.

(Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO ALLOW THE GOVERNOR TO DECLARE A VACANCY IN THE
3 OFFICE OF DISTRICT COURT JUDGE, SUPERIOR COURT JUDGE, JUDGE
4 OF THE COURT OF APPEALS, JUSTICE OF THE SUPREME COURT, OR
5 DISTRICT ATTORNEY WHEN THE INCUMBENT DOES NOT HAVE THE
6 LEGAL RIGHT TO EXERCISE ITS FUNCTIONS.

7 Whereas, the North Carolina Supreme Court in State ex rel. Atkins v Fortner,
8 236 NC 264 (1952) declared that an office is vacant when there is no incumbent who
9 has the legal right to exercise its functions; and

10 Whereas, Article IV, Section 22 of the North Carolina Constitution requires
11 that a person must be duly authorized to practice law in the courts of this State in order
12 to hold judicial office and Article IV, Section 18 has a similar requirement for district
13 attorney; and

14 Whereas, procedures for impeachment or removal are unnecessary in cases
15 where an officer has been disbarred as it is solely a factual determination; and

16 Whereas, Article IV of the Constitution provides that the Governor shall
17 appoint to fill vacancies in superior court, the Court of Appeals, the Supreme Court, and
18 district attorney, and by statute the Governor fills vacancies in district court; and

19 Whereas, it would be most appropriate to have the officer responsible for
20 filling a vacancy declare, after due process, that a vacancy exists in such office; Now,
21 therefore,

22 The General Assembly of North Carolina enacts:

23 **SECTION 1.** Chapter 7A of the General Statutes is amended by adding a
24 new Article to read:

"Article 31B.

"Declaration of Vacancy, Suspension of Salary.

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27 **"§ 7A-410. Vacancy exists on disbarment.**

28 When a judge of the district court, judge of the superior court, judge of the Court of
29 Appeals, justice of the Supreme Court, or a district attorney is no longer authorized to

1 practice law in the courts of this State, the Governor shall declare the office vacant.
2 Prior to making such declaration, the Governor shall notify the justice, judge, or district
3 attorney at least 10 days in advance of taking such action and shall afford the justice or
4 judge the opportunity to be heard on the matter. For purposes of this Article, the term
5 'no longer authorized to practice law' means that the person has been disbarred or
6 suspended and all appeals under G.S. 84-28 have been exhausted.

7 **"§ 7A-410.1. Suspension of salary.**

8 When a justice, judge, or district attorney has been disbarred or suspended from the
9 practice of law under G.S. 84-28 but the office has not been declared vacant under
10 G.S. 7A-410, the salary of the justice, judge, or district attorney is suspended
11 immediately. If the order of disbarment or suspension is reversed on appeal, the salary
12 shall be paid retroactively from the date the salary was suspended."

13 **SECTION 2.** G.S. 1-524 reads as rewritten:

14 **"§ 1-524. Possession of office not disturbed pending trial.**

15 (a) In any civil action pending in any of the courts of this State in which the title
16 to an office is involved, the defendant being in the possession of the office and
17 discharging the duties thereof shall continue therein pending the action, and no judge
18 shall make a restraining order interfering with or enjoining such officer in the premises.
19 The officer shall, notwithstanding any such order, continue to exercise the duties of the
20 office pending the litigation, and receive the emoluments thereof.

21 (b) This section shall not apply to any person subject to Article 31B of Chapter
22 7A of the General Statutes."

23 **SECTION 3.** This act is effective when it becomes law, and does not apply
24 to persons elected to or serving in the capacity of justice or judge on or before January
25 1, 1981.