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HOUSE BILL DRH30125-NDp-103

Short Title: Modify Judicial Retirement Ages.

(Public)

Sponsors: Representative Stevens.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE MAXIMUM AGE OF JUDICIAL SERVICE FOR JUSTICES
3 AND JUDGES OF THE GENERAL COURT OF JUSTICE AND MAGISTRATES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 1B of Chapter 7A of the General Statutes is repealed.

6 SECTION 2. G.S. 7A-5 reads as rewritten:

7 "~~§ 7A-5. Organization.~~**Organization and age limit for service as justice or judge.**

8 (a) The appellate division of the General Court of Justice consists of the Supreme Court
9 and the Court of Appeals.

10 (b) No justice or judge of the appellate division of the General Court of Justice may
11 continue in office beyond the last day of the year in which the justice or judge attains 76 years of
12 age, but justices and judges so retired may be recalled for periods of temporary service as
13 provided in this Subchapter."

14 SECTION 3. G.S. 7A-39.3(a) reads as rewritten:

15 "(a) Justices of the Supreme Court and judges of the Court of Appeals who have not
16 reached the mandatory retirement age specified in ~~G.S. 7A-4.20~~, G.S. 7A-5(b), but who have
17 retired under the provisions of G.S. 7A-39.2, or under the Uniform Judicial Retirement Act after
18 having completed 12 years of creditable service, may apply as provided in G.S. 7A-39.6 to
19 become emergency justices or judges and upon being commissioned as an emergency justice or
20 emergency judge shall be subject to temporary recall to active service in place of a justice or
21 judge who is temporarily incapacitated as provided in G.S. 7A-39.5."

22 SECTION 4. G.S. 7A-39.6 reads as rewritten:

23 "**§ 7A-39.6. Application to the Governor; commission as emergency justice or emergency**
24 **judge.**

25 No retired justice of the Supreme Court or retired judge of the Court of Appeals may become
26 an emergency justice or emergency judge except upon his written application to the Governor
27 certifying his desire and ability to serve as an emergency justice or emergency judge. If the
28 Governor is satisfied that the applicant qualifies under G.S. 7A-39.3(a) to become an emergency
29 justice or emergency judge and that he is physically and mentally able to perform the official
30 duties of an emergency justice or emergency judge, he shall issue to such applicant a commission
31 as an emergency justice or emergency judge of the court from which he retired. The commission
32 shall be effective upon the date of its issue and shall terminate when the judge to whom it is
33 issued reaches the maximum age for judicial service under ~~G.S. 7A-4.20(a)~~. G.S. 7A-5(b)."

34 SECTION 5. G.S. 7A-39.15(a) reads as rewritten:



1 "(a) A retired justice or judge of the Appellate Division of the General Court of Justice is
2 eligible to be appointed as an emergency recall judge of the Court of Appeals ~~under~~ if the justice
3 or judge meets each of the following circumstances; requirements:

- 4 (1) The justice or judge has retired under the provisions of the Consolidated
5 Judicial Retirement Act, Article 4 of Chapter 135 of the General Statutes, or
6 is eligible to receive a retirement allowance under that ~~act~~.
7 (2) The justice or judge has not reached the mandatory retirement age specified
8 in ~~G.S. 7A-4-20;G.S. 7A-5(b).~~
9 (3) The justice or judge has served a total of at least five years as a judge or justice
10 of the General Court of Justice, provided that at least six months was served
11 in the Appellate Division, whether or not otherwise eligible to serve as an
12 emergency justice or judge of the Appellate Division of the General Court of
13 ~~Justice;Justice.~~
14 (4) The judicial service of the justice or judge ended within the preceding 15
15 ~~years; and~~years.
16 (5) The justice or judge has applied to the Governor for appointment as an
17 emergency recall judge of the Court of Appeals in the same manner as is
18 provided for application in G.S. 7A-53. If the Governor is satisfied that the
19 applicant meets the requirements of this section and is physically and mentally
20 able to perform the duties of a judge of the Court of Appeals, the Governor
21 shall issue a commission appointing the applicant as an emergency recall
22 judge of the Court of Appeals until the applicant reaches the mandatory
23 retirement age for judges of the Court of Appeals specified in
24 ~~G.S. 7A-4-20;G.S. 7A-5(b).~~

25 Any former justice or judge of the Appellate Division of the General Court of Justice who
26 otherwise meets the requirements of this section to be appointed an emergency recall judge of
27 the Court of Appeals, but who has already reached the mandatory retirement age for judges of
28 the Court of Appeals set forth in ~~G.S. 7A-4-20; G.S. 7A-5(b).~~ may apply to the Governor to be
29 appointed as an emergency recall judge of the Court of Appeals as provided in this section. If the
30 Governor issues a commission to the applicant, the retired justice or judge is subject to recall as
31 an emergency recall judge of the Court of Appeals as provided in this section."

32 **SECTION 6.** Article 7 of Chapter 7A of the General Statutes is amended by adding
33 a new section to read:

34 **"§ 7A-40.1. Age limit for service as superior court judge; exception.**

35 No superior court judge may continue in office beyond the last day of the year in which the
36 superior court judge attains 72 years of age, but superior court judges so retired may be recalled
37 for periods of temporary service as provided in this Subchapter."

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

39 **"§ 7A-45.2. Emergency special judges of the superior court; qualifications, appointment,**
40 **removal, and authority.**

41 (a) Any justice or judge of the appellate division of the General Court of Justice ~~who;~~ that
42 meets each of the following requirements may apply to the Governor for appointment as an
43 emergency special superior court judge in the same manner as is provided for application as an
44 emergency superior court judge in G.S. 7A-53:

- 45 (1) Retires under the provisions of the Consolidated Judicial Retirement Act,
46 Article 4 of Chapter 135 of the General Statutes, or who is eligible to receive
47 a retirement allowance under that ~~act~~.
48 (2) Has not reached the mandatory retirement age specified in
49 ~~G.S. 7A-4-20;G.S. 7A-5(b).~~
50 (3) Has served at least five years as a superior court judge or five years as a justice
51 or judge of the appellate division of the General Court of Justice, or any

1 combination thereof, whether or not eligible to serve as an emergency justice
 2 or judge of the appellate division of the General Court of ~~Justice; and~~Justice.
 3 (4) Whose judicial service ended within the preceding 10 ~~years;~~years.
 4 ~~may apply to the Governor for appointment as an emergency special superior court judge in the~~
 5 ~~same manner as is provided for application as an emergency superior court judge in G.S. 7A-53.~~
 6 If the Governor is satisfied that the applicant meets the requirements of this section and is
 7 physically and mentally able to perform the duties of a superior court judge, the Governor shall
 8 issue a commission appointing the applicant as an emergency special superior court judge until
 9 the applicant reaches the mandatory retirement age for superior court judges specified in
 10 ~~G.S. 7A-4.20;~~G.S. 7A-40.1.

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

- 13 (1) Have the same powers and duties, when duly assigned to hold court, as
 14 provided for an emergency superior court judge by ~~G.S. 7A-48;~~G.S. 7A-48.
- 15 (2) Be subject to assignment in the same manner as provided for an emergency
 16 superior court judge by G.S. 7A-46 and ~~G.S. 7A-52(a);~~G.S. 7A-52(a).
- 17 (3) Receive the same compensation, expenses, and allowances, when assigned to
 18 hold court, as an emergency superior court judge as provided by
 19 ~~G.S. 7A-52(b);~~G.S. 7A-52(b).
- 20 (4) Be subject to the provisions and requirements of the Canons of Judicial
 21 ~~Conduct;~~andConduct.
- 22 (5) Not engage in the practice of law during any period for which the emergency
 23 special superior court judgeship is commissioned. However, this subdivision
 24 shall not be construed to prohibit an emergency special superior court judge
 25 appointed pursuant to this section from serving as a referee, arbitrator, or
 26 mediator, during service as an emergency special superior court judge when
 27 the service does not conflict with or interfere with the emergency special
 28 superior court judge's judicial service in emergency status.

29 (c) Upon reaching mandatory retirement age for superior court judges as set forth in
 30 ~~G.S. 7A-4.20;~~G.S. 7A-40.1, any emergency special superior court judge appointed pursuant to
 31 this section, whose commission has expired, may be recalled as a recalled emergency special
 32 superior court judge to preside over any regular or special session of the superior court ~~under if~~
 33 each of the following circumstances; requirements is satisfied:

- 34 (1) The judge shall consent to the ~~recall;~~recall.
- 35 (2) The Chief Justice may order the ~~recall;~~recall.
- 36 (3) Prior to ordering recall, the Chief Justice shall be satisfied that the recalled
 37 judge is capable of efficiently and promptly discharging the duties of the
 38 office to which ~~recalled;~~recalled.
- 39 (4) Jurisdiction of a recalled emergency special superior court judge is as set forth
 40 in ~~G.S. 7A-48;~~G.S. 7A-48.
- 41 (5) Orders of recall and assignment shall be in writing and entered upon the
 42 minutes of the court to which ~~assigned;~~andthe judge is assigned.

43 ...

44 (d) Any former justice or judge of the appellate division of the General Court of Justice
 45 who otherwise meets the requirements of subsection (a) of this section to be appointed an
 46 emergency special superior court judge but has already reached the mandatory retirement age for
 47 superior court judges set forth in ~~G.S. 7A-4.20;~~G.S. 7A-40.1 on retirement may, in lieu of serving
 48 as an emergency judge of the court from which he retired, apply to the Governor to be appointed
 49 as an emergency special superior court judge as provided in this section. If the Governor issues
 50 a commission to the applicant, the retired justice or judge is subject to recall as an emergency
 51 special superior court judge as provided in subsection (c) of this section.

1 "

2 **SECTION 8.** G.S. 7A-52(a) reads as rewritten:

3 "(a) Judges of the district court and judges of the superior court who have not reached the
4 mandatory retirement age specified in ~~G.S. 7A-4.20,~~ G.S. 7A-40.1 and G.S. 7A-140.1,
5 respectively, but who have retired under the provisions of G.S. 7A-51, or under the Uniform
6 Judicial Retirement Act after having completed five years of creditable service, may apply as
7 provided in G.S. 7A-53 to become emergency judges of the court from which they retired. From
8 the commissioned emergency district, superior, and special superior court judges, the Chief
9 Justice of the Supreme Court shall create two lists of active emergency judges and two lists of
10 inactive emergency judges. For emergency superior and special superior court judges, the active
11 list shall be limited to a combined total of 10 emergency judges; all other emergency superior
12 and special superior court judges shall be on an inactive list. For emergency district court judges,
13 the active list shall be limited to 25 emergency judges; all other emergency district court judges
14 shall be on an inactive list. There is no limit to the number of emergency judges on either inactive
15 list. In the Chief Justice's discretion, emergency judges may be added or removed from their
16 respective active and inactive lists, as long as the respective numerical limits on the active lists
17 are observed. The Chief Justice is requested to consider geographical distribution in assigning
18 emergency judges to an active list but may utilize any factor in determining which emergency
19 judges are assigned to an active list. The Chief Justice of the Supreme Court may order any
20 emergency district, superior, or special superior court judge on an active list who, in ~~his~~ the Chief
21 Justice's opinion, is competent to perform the duties of a ~~judge,~~ judge and to hold regular or
22 special sessions of the court from which the judge retired, as needed. Order of assignment shall
23 be in writing and entered upon the minutes of the court to which ~~such~~ the emergency judge is
24 assigned. An emergency judge shall only be assigned in the event of a:

25 "

26 **SECTION 9.** G.S. 7A-53 reads as rewritten:

27 "**§ 7A-53. Application to the Governor; commission as emergency judge.**

28 No retired judge of the district or superior court may become an emergency judge except
29 upon ~~his~~ the judge's written application to the Governor certifying ~~his~~ the judge's desire and
30 ability to serve as an emergency judge. If the Governor is satisfied that the applicant qualifies
31 under G.S. 7A-52(a) to become an emergency judge and ~~that he~~ the applicant is physically and
32 mentally able to perform the official duties of an emergency judge, ~~he~~ the Governor shall issue
33 to ~~such~~ the applicant a commission as an emergency judge of the court from which ~~he~~ the
34 applicant retired. The commission shall be effective upon the date of its issue and shall terminate
35 when the judge to whom it is issued reaches the maximum age for judicial service under
36 ~~G.S. 7A-4.20(a), G.S. 7A-40.1 or G.S. 7A-140.1, whichever is applicable."~~

37 **SECTION 10.** Article 14 of Chapter 7A of the General Statutes is amended by
38 adding a new section to read:

39 "**§ 7A-140.1. Age limit for service as district judge; exception.**

40 No district judge may continue in office beyond the last day of the year in which the district
41 judge attains 72 years of age, but district judges so retired may be recalled for periods of
42 temporary service as provided in this Subchapter."

43 **SECTION 11.** G.S. 7A-170(b) reads as rewritten:

44 "(b) No magistrate may continue in office beyond the last day of the ~~month~~ year in which
45 the magistrate reaches the mandatory retirement age for ~~justices and district judges of the General~~
46 ~~Court of Justice~~ specified in ~~G.S. 7A-4.20, G.S. 7A-140.1."~~

47 **SECTION 12.** G.S. 135-57(b) reads as rewritten:

48 "(b) Any member who is a justice or judge of the General Court of Justice shall be
49 automatically retired as of the ~~first~~ last day of the calendar ~~month~~ coinciding with or next
50 ~~following the later of January 1, 1974, or his attainment of his seventy-second birthday; provided,~~
51 ~~however, that no judge who is a member on January 1, 1974, shall be forced to retire under the~~

1 ~~provisions of this subsection at an earlier date than the last day that he is permitted to remain in~~
2 ~~office under the provisions of G.S. 7A-4.20.~~year in which the justice or judge reaches the
3 maximum age for judicial service under G.S. 7A-5(b), 7A-40.1, or 7A-140.1, whichever is
4 applicable."

5 **SECTION 13.** This act is effective when it becomes law and applies to justices,
6 judges, and magistrates serving on or after that date, provided that nothing in this act shall be
7 construed to automatically halt the retirement process of a justice, judge, or magistrate that has
8 already initiated that process.