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SENATE DRS15021-ST-2 (10/20)

Short Title: Magistrates Recusal of Civil Ceremonies. (Public)

Sponsors: Senator Berger (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW MAGISTRATES AND REGISTERS OF DEEDS TO RECUSE
3 THEMSELVES FROM PERFORMING DUTIES RELATED TO MARRIAGE
4 CEREMONIES DUE TO SINCERELY HELD RELIGIOUS OBJECTION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 1 of Chapter 51 of the General Statutes is amended by adding
7 a new section to read:

8 "**§ 51-5.5. Recusal of certain public officials.**

9 (a) Every magistrate has the right to recuse from performing all lawful marriages under
10 this Chapter based upon any sincerely held religious objection. Such recusal shall be upon
11 notice to the chief district court judge and is in effect for at least six months from the time
12 delivered to the chief district court judge. The recusing magistrate may not perform any
13 marriage under this Chapter until the recusal is rescinded in writing. The chief district court
14 judge shall ensure that all individuals issued a marriage license seeking to be married before a
15 magistrate may marry.

16 (b) Every assistant register of deeds and deputy register of deeds has the right to recuse
17 from issuing all lawful marriage licenses under this Chapter based upon any sincerely held
18 religious objection. Such recusal shall be upon notice to the Register of Deeds and is in effect
19 for at least six months from the time delivered to the Register of Deeds. The recusing assistant
20 or deputy register may not issue any marriage license until the recusal is rescinded in writing.
21 The Register of Deeds shall ensure for all applicants for marriage licenses to be issued a license
22 upon satisfaction of the requirements as set forth in Article 2 of this Chapter.

23 (c) If, and only if, all magistrates in a jurisdiction have recused under subsection (a) of
24 this section, the chief district court judge shall notify the Administrative Office of the Courts.
25 The Administrative Office of the Courts shall ensure that a magistrate is available in that
26 jurisdiction for performance of marriages for the times required under G.S. 7A-292(b). Only for
27 the duration of the time the Administrative Office of the Courts has not designated a magistrate
28 to perform marriages in that jurisdiction, the chief district court judge shall be deemed a
29 magistrate for the purposes of performing marriages under this Chapter.

30 (d) No magistrate, assistant register of deeds, or deputy register of deeds may be
31 charged or convicted under G.S. 14-230 or G.S. 161-27, or subjected to a disciplinary action,
32 due to a good-faith recusal under this section."

33 SECTION 2. G.S. 14-230 reads as rewritten:

34 "**§ 14-230. Willfully failing to discharge duties.**

35 (a) If any clerk of any court of record, sheriff, magistrate, school board member, county
36 commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or



1 of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties
2 of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall
3 be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his
4 qualification, willfully and corruptly omitted, neglected or refused to discharge any of the
5 duties of his office, or willfully and corruptly violated his oath of office according to the true
6 intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be
7 punished by removal therefrom under the sentence of the court as a part of the punishment for
8 the offense.

9 (b) No magistrate recusing in accordance with G.S. 51-5.5 may be charged under this
10 section for recusal to perform marriages in accordance with Chapter 51 of the General
11 Statutes."

12 **SECTION 3.** G.S. 161-27 reads as rewritten:

13 **"§ 161-27. Register of deeds failing to discharge duties; penalty.**

14 (a) If any register of deeds fails to perform any of the duties imposed or authorized by
15 law, he shall be guilty of a Class 1 misdemeanor, and he shall be removed from office.

16 (b) No Register of Deeds recusing in accordance with G.S. 51-5.5 may be charged
17 under this section for recusal to issue marriage licenses in accordance with Chapter 51 of the
18 General Statutes."

19 **SECTION 4.** G.S. 7A-292 reads as rewritten:

20 **"§ 7A-292. Additional powers of magistrates.**

21 (a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate
22 in civil and criminal actions, each magistrate has the following additional powers:

- 23 (1) To administer oaths.
- 24 (2) To punish for direct criminal contempt subject to the limitations contained in
25 Chapter 5A of the General Statutes of North Carolina.
- 26 (3) When authorized by the chief district judge, to take depositions and
27 examinations before trial.
- 28 (4) To issue subpoenas and capiases valid throughout the county.
- 29 (5) To take affidavits for the verification of pleadings.
- 30 (6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41.
- 31 (7) To assign a year's allowance to the surviving spouse and a child's allowance
32 to the children as provided in Chapter 30, Article 4, of the General Statutes.
- 33 (8) To take acknowledgments of instruments, as provided in G.S. 47-1.
- 34 (9) To perform the marriage ceremony, as provided in G.S. 51-1.
- 35 (10) To take acknowledgment of a written contract or separation agreement
36 between husband and wife.
- 37 (11) Repealed by Session Laws 1973, c. 503, s. 9.
- 38 (12) To assess contribution for damages or for work done on a dam, canal, or
39 ditch, as provided in G.S. 156-15.
- 40 (13) Repealed by Session Laws 1973, c. 503, s. 9.
- 41 (14) To accept the filing of complaints and to issue summons pursuant to Article
42 4 of Chapter 42A of the General Statutes in expedited eviction proceedings
43 when the office of the clerk of superior court is closed.
- 44 (15) When authorized by the chief district judge, as permitted in
45 G.S. 7A-146(11), to provide for appointment of counsel pursuant to Article
46 36 of this Chapter.
- 47 (16) To appoint an umpire to determine motor vehicle liability policy diminution
48 in value, as provided in G.S. 20-279.21(d1).

49 (b) The authority granted to magistrates under G.S. 51-1 and subsection (a) of this
50 section is a responsibility given to the collective magistrates in a county and is not a duty
51 imposed upon each individual magistrate. The chief district court judge shall ensure that

1 marriages before a magistrate are available to be performed at least a total of 10 hours per
2 week, over at least three business days per week."

3 **SECTION 5.** Any magistrate who resigned, or was terminated from, his or her
4 office between October 6, 2014, and the effective date of this act may apply to fill any vacant
5 position of magistrate. Notwithstanding any other provision of law, with respect to any
6 magistrate who resigned his or her office between October 6, 2014, and the effective date of
7 this act, and who is subsequently reappointed as a magistrate within 90 days after the effective
8 date of this act:

- 9 (1) For the period of time between that magistrate's resignation and his or her
10 resumption of service upon reappointment, the magistrate shall not receive
11 salary or other compensation and shall not earn leave. However, the
12 magistrate shall be considered to have been serving as a magistrate during
13 that period for purposes of determining continuous service, length of
14 aggregate service, anniversary date, longevity pay rate, and the accrual of
15 vacation and sick leave.
- 16 (2) For purposes of the Teachers' and State Employees' Retirement System and
17 the calculation of benefits under that System, (i) the magistrate shall be
18 considered to have been an employee under G.S. 135-1(10) during the break
19 in service, (ii) the period of the break in service shall be counted as
20 membership service under G.S. 135-1(14), and (iii) the magistrate shall be
21 deemed to have earned compensation under G.S. 135-1(7a) during the break
22 in service at the rate of compensation that would have applied had there been
23 no break in service.
- 24 (3) The Judicial Department shall pay and submit both the employee and
25 employer contributions to the Retirement Systems Division on behalf of the
26 magistrate as though that magistrate had been in active service during the
27 period in question. Those contributions shall be submitted within 90 days of
28 the magistrate's resumption of service and shall not be subject to penalties or
29 interest if submitted within that 90-day period.

30 **SECTION 6.** This act is effective when it becomes law.