

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 34

Short Title: Remove Judicial Age Limit. (Public)

Sponsors: Representatives Warren, C. Smith, Moffitt, and Zachary (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 1, if favorable, Rules, Calendar, and Operations of the House

February 2, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO REMOVE THE AGE LIMIT FOR JUSTICES AND JUDGES OF THE GENERAL
3 COURT OF JUSTICE AND MAGISTRATES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 7A-4.20 is repealed.

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

7 "(a) Justices of the Supreme Court and judges of the Court of Appeals who have ~~not~~
8 ~~reached the mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the~~
9 ~~provisions of G.S. 7A-39.2, or under the Uniform Judicial Retirement Act after having completed~~
10 ~~12 years of creditable service, may apply as provided in G.S. 7A-39.6 to become emergency~~
11 ~~justices or judges and upon being commissioned as an emergency justice or emergency judge~~
12 ~~shall be subject to temporary recall to active service in place of a justice or judge who is~~
13 ~~temporarily incapacitated as provided in G.S. 7A-39.5."~~

14 **SECTION 3.** G.S. 7A-39.6 reads as rewritten:

15 **"§ 7A-39.6. Application to the Governor; commission as emergency justice or emergency**
16 **judge.**

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

27 **SECTION 4.** G.S. 7A-39.13 is repealed.

28 **SECTION 5.** G.S. 7A-39.14 reads as rewritten:

29 **"§ 7A-39.14. Recall by Chief Justice of retired or emergency justices or judges for**
30 **temporary vacancy.**

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



- 1 (1) If a vacancy exists on the Supreme Court, ~~he the Chief Justice~~ may recall an
2 emergency or retired justice to serve on that court until the vacancy is filled
3 in accordance with law.
- 4 (2) If a vacancy exists on the Court of Appeals, ~~he the Chief Justice~~ may recall an
5 emergency or retired justice of the Supreme Court or judge of the Court of
6 Appeals to serve on the Court of Appeals until the vacancy is filled in
7 accordance with law.
- 8 (3) With the concurrence of a majority of the Supreme Court, ~~he the Chief Justice~~
9 may recall an emergency or retired justice to serve on the Supreme Court in
10 place of a sitting justice who, as determined by the Chief Justice, is
11 temporarily unable to perform all of the duties of ~~his the justice's~~ office.
- 12 (4) With the concurrence of a majority of the Supreme Court, ~~he the Chief Justice~~
13 may recall an emergency or retired justice of the Supreme Court or judge of
14 the Court of Appeals to serve on the Court of Appeals in place of a sitting
15 judge who, as determined by the Chief Justice, is temporarily unable to
16 perform all of the duties of ~~his the judge's~~ office.
- 17 (b) No judge or justice may be recalled unless ~~he the judge or justice~~ consents to the
18 recall. Orders of recall issued pursuant to this section must be in writing and entered on the
19 minutes of the court. In addition, if the judge or justice is recalled pursuant to subdivision (a)(3)
20 or (a)(4), the order shall contain a finding by the Chief Justice setting out, in detail, the reason
21 for the recall.
- 22 (c) A judge or justice recalled pursuant to subdivision (a)(1) or (a)(2) of this section:
- 23 (1) Has the same authority and jurisdiction granted to emergency justices and
24 judges under ~~G.S. 7A-39.7; G.S. 7A-39.7.~~
- 25 (2) Is subject to rules adopted pursuant to G.S. 7A-39.8 regarding filing of
26 opinions and other ~~matters; and matters.~~
- 27 (3) Is compensated as are other retired or emergency justices or judges recalled
28 for service pursuant to G.S. 7A-39.5 or G.S. 7A-39.13.
- 29 (d) A judge or justice recalled pursuant to subdivision (a)(3) or (a)(4) of this section:
- 30 (1) Has the same authority and jurisdiction granted to emergency justices and
31 judges under ~~G.S. 7A-39.7; G.S. 7A-39.7.~~
- 32 (2) Is subject to rules adopted pursuant to G.S. 7A-39.8 regarding filing of
33 opinions and other ~~matters; matters.~~
- 34 (3) May, after the return of the judge or justice in whose place ~~he the recalled~~
35 ~~judge or justice~~ was sitting, complete the duties that had been assigned to ~~him~~
36 ~~before the recalled judge or justice prior to the return of that the originally~~
37 ~~seated judge or justice; and justice.~~
- 38 (4) Is compensated as are other retired or emergency justices or judges recalled
39 for service pursuant to G.S. 7A-39.5 or G.S. 7A-39.13.
- 40 (e) A retired or emergency justice or judge may serve on the Supreme Court or Court of
41 Appeals pursuant to subdivision (a)(3) or (a)(4) only if ~~he the retired or emergency justice or~~
42 ~~judge~~ is recalled to serve temporarily in place of a sitting justice or judge who is not temporarily
43 incapacitated under circumstances that would permit temporary service of the retired or
44 emergency justice or judge pursuant to ~~G.S. 7A-39.5 or G.S. 7A-39.13. G.S. 7A-39.5.~~ This
45 section does not authorize more than seven justices to serve on the Supreme Court at any given
46 time, nor does it authorize more than 15 justices and judges to serve on the Court of Appeals at
47 any given time. In no case may more than one emergency justice or emergency judge serve on
48 one panel of the Court of Appeals at any given time.
- 49 (f) Repealed by Session Laws 1989, c. 795, s. 27.1."

50 **SECTION 6.** G.S. 7A-39.15 reads as rewritten:

51 "**§ 7A-39.15. Emergency recall judges of the Court of Appeals.**

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 the following
3 circumstances:

- 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~~act.
7 ~~(2) The justice or judge has not reached the mandatory retirement age specified~~
8 ~~in G.S. 7A-4.20;~~
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 G.S.~~
24 ~~7A-4.20.~~Appeals.

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, may apply to the Governor to be appointed as an~~
29 ~~emergency recall judge of the Court of Appeals as provided in this section. If the Governor issues~~
30 ~~a commission to the applicant, the retired justice or judge is subject to recall as an emergency~~
31 ~~recall judge of the Court of Appeals as provided in this section.~~

32 ...

33 (c) Any emergency recall judge of the Court of Appeals appointed as provided in this
34 section shall be subject to recall in the following manner:

- 35 (1) The judge shall consent to the ~~recall~~recall.
36 (2) The Chief Judge of the Court of Appeals may order the ~~recall~~recall.
37 (3) Prior to ordering recall, the Chief Judge of the Court of Appeals shall be
38 satisfied that the recalled judge is capable of efficiently and promptly
39 discharging the duties of the office to which ~~recalled~~recalled.
40 (4) Orders of recall and assignment shall be in writing, evidenced by a
41 commission signed by the Chief Judge of the Court of Appeals, and entered
42 upon the minutes of the permanent records of the Court of ~~Appeals~~Appeals.
43 (5) Compensation, expenses, and allowances of emergency recall judges of the
44 Court of Appeals are the same as for recalled emergency superior court judges
45 under ~~G.S. 7A-52(b)~~G.S. 7A-52(b).
46 (6) Emergency recall judges assigned under those provisions shall have the same
47 powers and duties, when duly assigned to hold court, as provided for by law
48 for judges of the Court of ~~Appeals~~Appeals.
49 (7) Emergency recall judges of the Court of Appeals are subject to assignment in
50 the same manner as provided for by G.S. 7A-16 and ~~G.S. 7A-19~~G.S. 7A-19.

- 1 (8) Emergency recall judges of the Court of Appeals shall be subject to rules
2 adopted pursuant to G.S. 7A-39.8 regarding the filing of opinions and other
3 ~~matters;matters.~~
- 4 (9) Emergency recall judges of the Court of Appeals shall be subject to the
5 provisions and requirements of the Canons of Judicial Conduct during the
6 term of ~~assignment; andassignment.~~
- 7 (10) An emergency recall judge of the Court of Appeals shall not engage in the
8 practice of law during any period for which the emergency recall Court of
9 Appeals judgeship is commissioned. However, this subdivision shall not be
10 construed to prohibit an emergency recall judge of the Court of Appeals
11 appointed pursuant to this section from serving as a referee, arbitrator, or
12 mediator during service as an emergency recall judge of the Court of Appeals
13 so long as the service does not conflict with or interfere with the judge's
14 service as an emergency recall judge of the Court of Appeals.

15"

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

17 **"§ 7A-45.2. Emergency special judges of the superior court; qualifications, appointment,
18 removal, and authority.**

19 (a) Any justice or judge of the appellate division of the General Court of Justice ~~who;who~~
20 meets the criteria of subsection (a1) of this section may apply to the Governor for appointment
21 as an emergency special superior court judge in the same manner as is provided for application
22 as an emergency superior court judge in G.S. 7A-53. If the Governor is satisfied that the applicant
23 meets the requirements of this section and is physically and mentally able to perform the duties
24 of a superior court judge, the Governor shall issue a commission appointing the applicant as an
25 emergency special superior court judge.

26 (a1) A justice or judge of the appellate division of the General Court of Justice shall be
27 eligible for appointment as an emergency special superior court judge if the justice or judge:

- 28 (1) Retires under the provisions of the Consolidated Judicial Retirement Act,
29 Article 4 of Chapter 135 of the General Statutes, or ~~who~~ is eligible to receive
30 a retirement allowance under that ~~act;act.~~
- 31 (2) ~~Has not reached the mandatory retirement age specified in G.S. 7A-4.20;~~
- 32 (3) Has served at least five years as a superior court judge or five years as a justice
33 or judge of the appellate division of the General Court of Justice, or any
34 combination thereof, whether or not eligible to serve as an emergency justice
35 or judge of the appellate division of the General Court of ~~Justice; andJustice.~~
- 36 (4) ~~Whose Ended the justice or judge's judicial service ended~~ within the preceding
37 10 ~~years;years.~~

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

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

- 47 (1) Have the same powers and duties, when duly assigned to hold court, as
48 provided for an emergency superior court judge by ~~G.S. 7A-48;G.S. 7A-48.~~
- 49 (2) Be subject to assignment in the same manner as provided for an emergency
50 superior court judge by G.S. 7A-46 and ~~G.S. 7A-52(a);G.S. 7A-52(a).~~

- 1 (3) Receive the same compensation, expenses, and allowances, when assigned to
 2 hold court, as an emergency superior court judge as provided by
 3 ~~G.S. 7A-52(b);G.S. 7A-52(b).~~
 4 (4) Be subject to the provisions and requirements of the Canons of Judicial
 5 ~~Conduct; and~~Conduct.
 6 (5) Not engage in the practice of law during any period for which the emergency
 7 special superior court judgeship is commissioned. However, this subdivision
 8 shall not be construed to prohibit an emergency special superior court judge
 9 appointed pursuant to this section from serving as a referee, arbitrator, or
 10 mediator, during service as an emergency special superior court judge when
 11 the service does not conflict with or interfere with the emergency special
 12 superior court judge's judicial service in emergency status.

13 ~~(e) Upon reaching mandatory retirement age for superior court judges as set forth in~~
 14 ~~G.S. 7A-4.20, any emergency special superior court judge appointed pursuant to this section,~~
 15 ~~whose commission has expired, may be recalled as a recalled emergency special superior court~~
 16 ~~judge to preside over any regular or special session of the superior court under the following~~
 17 ~~circumstances:~~

- 18 (1) ~~The judge shall consent to the recall;~~
 19 (2) ~~The Chief Justice may order the recall;~~
 20 (3) ~~Prior to ordering recall, the Chief Justice shall be satisfied that the recalled~~
 21 ~~judge is capable of efficiently and promptly discharging the duties of the~~
 22 ~~office to which recalled;~~
 23 (4) ~~Jurisdiction of a recalled emergency special superior court judge is as set forth~~
 24 ~~in G.S. 7A-48;~~
 25 (5) ~~Orders of recall and assignment shall be in writing and entered upon the~~
 26 ~~minutes of the court to which assigned; and~~
 27 (6) ~~Compensation, expenses, and allowances of recalled emergency special~~
 28 ~~superior court judges are the same as for recalled emergency superior court~~
 29 ~~judges under G.S. 7A-52(b).~~
 30 (7) ~~The emergency special superior court judge is listed as active on the list~~
 31 ~~described in G.S. 7A-52(a).~~

32 ~~(d) Any former justice or judge of the appellate division of the General Court of Justice~~
 33 ~~who otherwise meets the requirements of subsection (a) of this section to be appointed an~~
 34 ~~emergency special superior court judge but has already reached the mandatory retirement age for~~
 35 ~~superior court judges set forth in G.S. 7A-4.20 on retirement may, in lieu of serving as an~~
 36 ~~emergency judge of the court from which he retired, apply to the Governor to be appointed as an~~
 37 ~~emergency special superior court judge as provided in this section. If the Governor issues a~~
 38 ~~commission to the applicant, the retired justice or judge is subject to recall as an emergency~~
 39 ~~special superior court judge as provided in subsection (e) of this section.~~

40"

41 **SECTION 8.** G.S. 7A-45.3 reads as rewritten:

42 "**§ 7A-45.3. Superior court judges designated for complex business cases.**

43 The Chief Justice may exercise the authority under rules of practice prescribed pursuant to
 44 G.S. 7A-34 to designate one or more of the special superior court judges authorized by
 45 G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice.
 46 Any judge so designated shall be known as a Business Court Judge and shall preside in the
 47 Business Court. If there is more than one business court judge, including any judge serving as a
 48 senior business court judge pursuant to ~~G.S. 7A-52(a1) or upon recall pursuant to G.S. 7A-57,~~
 49 G.S. 7A-52(a1), the Chief Justice may designate one of them as the Chief Business Court Judge.
 50 If there is no designation by the Chief Justice, the judge with the longest term of service on the
 51 court shall serve as Chief Business Court Judge until the Chief Justice makes an appointment to

1 the position. The presiding Business Court Judge shall issue a written opinion in connection with
 2 any order granting or denying a motion under G.S. 1A-1, Rule 12, 56, 59, or 60, or any order
 3 finally disposing of a complex business case, other than an order effecting a settlement agreement
 4 or jury verdict."

5 **SECTION 9.** G.S. 7A-52 reads as rewritten:

6 "**§ 7A-52. Retired district and superior court judges may become emergency judges subject**
 7 **to recall to active service; compensation for emergency judges on recall.**

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

29 ...

30 (a1) An emergency judge of the superior court may be recalled to active service by the
 31 Chief Justice and assigned to hear and decide complex business cases if, at the time of the judge's
 32 retirement, all of the following conditions are met:

33 ...

34 (4) ~~If confirmed and appointed to the successive term of office for which~~
 35 ~~nominated, the judge would reach mandatory retirement age before~~
 36 ~~completing that term of office.~~

37 An emergency judge assigned to hear and decide complex business cases pursuant to this
 38 subsection shall be designated by the Chief Justice as a senior business court judge and shall be
 39 eligible to serve in that capacity for five years from the issuance date of the judge's commission
 40 under G.S. 7A-53 or until the judge's commission expires, whichever occurs first. Order of
 41 assignment shall be in writing and entered upon the minutes of the court to which ~~such~~ the
 42 emergency judge is assigned. An emergency judge assigned to hear and decide complex business
 43 cases shall not be counted in the combined total of active emergency superior and special superior
 44 court judges described in subsection (a) of this section.

45"

46 **SECTION 10.** G.S. 7A-53 reads as rewritten:

47 "**§ 7A-53. Application to the Governor; commission as emergency judge.**

48 No retired judge of the district or superior court may become an emergency judge except
 49 upon ~~his~~ the judge's written application to the Governor certifying ~~his~~ the judge's desire and
 50 ability to serve as an emergency judge. If the Governor is satisfied that the applicant qualifies
 51 under G.S. 7A-52(a) to become an emergency judge and that ~~he~~ the applicant is physically and

1 mentally able to perform the official duties of an emergency judge, ~~he~~ the Governor shall issue
2 to ~~such~~ the applicant a commission as an emergency judge of the court from which ~~he~~ the
3 applicant retired. The commission shall be effective upon the date of its ~~issue and shall terminate~~
4 ~~when the judge to whom it is issued reaches the maximum age for judicial service under G.S.~~
5 ~~7A-4.20(a).~~ issue."

6 **SECTION 11.** G.S. 7A-57 is repealed.

7 **SECTION 12.** G.S. 7A-170 reads as rewritten:

8 "**§ 7A-170. Nature of office and ~~oath; age limit for service.~~ oath.**

9 (a) A magistrate is an officer of the district court. Before entering upon the duties of ~~his~~
10 the magistrate's office, a magistrate shall take the oath of office prescribed for a magistrate of the
11 General Court of Justice. A magistrate possesses all the powers of ~~his~~ the magistrate's office at
12 all times during ~~his~~ the magistrate's term.

13 (b) ~~No magistrate may continue in office beyond the last day of the month in which the~~
14 ~~magistrate reaches the mandatory retirement age for justices and judges of the General Court of~~
15 ~~Justice specified in G.S. 7A-4.20."~~

16 **SECTION 13.** G.S. 135-57(b) is repealed.

17 **SECTION 14.** Nothing in this act shall be construed to invalidate any retirement
18 application submitted prior to the effective date of this act.

19 **SECTION 15.** This act is effective when it becomes law.