

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

1

SENATE BILL 871

Short Title: Emergency Recall/Court of Appeals.

(Public)

Sponsors: Senator Soles.

Referred to: Judiciary I/Constitution

April 26, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE APPOINTMENT AND ASSIGNMENT OF
EMERGENCY RECALL JUDGES OF THE COURT OF APPEALS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

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

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

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

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

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

1 (4) The judicial service of the justice or judge ended within the preceding
2 15 years; and

3 (5) The justice or judge has applied to the Governor for appointment as an
4 emergency recall judge of the Court of Appeals in the same manner as is
5 provided for application in G.S. 7A-53. If the Governor is satisfied that
6 the applicant meets the requirements of this section and is physically
7 and mentally able to perform the duties of a judge of the Court of
8 Appeals, the Governor shall issue a commission appointing the
9 applicant as an emergency recall judge of the Court of Appeals until the
10 applicant reaches the mandatory retirement age for judges of the Court
11 of Appeals specified in G.S. 7A-4.20.

12 Any former justice or judge of the Appellate Division of the General Court of Justice
13 who otherwise meets the requirements of this section to be appointed an emergency recall
14 judge of the Court of Appeals, but who has already reached the mandatory retirement age
15 for judges of the Court of Appeals set forth in G.S. 7A-4.20, may apply to the Governor
16 to be appointed as an emergency recall judge of the Court of Appeals as provided in this
17 section. If the Governor issues a commission to the applicant, the retired justice or judge
18 is subject to recall as an emergency recall judge of the Court of Appeals as provided in
19 this section.

20 (b) Notwithstanding any other provision of law, the Chief Judge of the Court of
21 Appeals may recall and assign one or more emergency recall judges of the Court of
22 Appeals, provided funds are available, if the Chief Judge determines that one or more
23 emergency recall judges of the Court of Appeals are necessary to discharge the court's
24 business expeditiously.

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

27 (1) The judge shall consent to the recall;

28 (2) The Chief Judge of the Court of Appeals may order the recall;

29 (3) Prior to ordering recall, the Chief Judge of the Court of Appeals shall be
30 satisfied that the recalled judge is capable of efficiently and promptly
31 discharging the duties of the office to which recalled;

32 (4) Orders of recall and assignment shall be in writing, evidenced by a
33 commission signed by the Chief Judge of the Court of Appeals, and
34 entered upon the minutes of the permanent records of the Court of
35 Appeals;

36 (5) Compensation, expenses, and allowances of emergency recall judges of
37 the Court of Appeals are the same as for recalled emergency superior
38 court judges under G.S. 7A-52(b);

39 (6) Emergency recall judges assigned under those provisions shall have the
40 same powers and duties, when duly assigned to hold court, as provided
41 for by law for judges of the Court of Appeals;

- 1 (7) Emergency recall judges of the Court of Appeals are subject to
2 assignment in the same manner as provided for by G.S. 7A-16 and G.S.
3 7A-19;
- 4 (8) Emergency recall judges of the Court of Appeals shall be subject to
5 rules adopted pursuant to G.S. 7A-39.8 regarding the filing of opinions
6 and other matters;
- 7 (9) Emergency recall judges of the Court of Appeals shall be subject to the
8 provisions and requirements of the Canons of Judicial Conduct during
9 the term of assignment; and
- 10 (10) An emergency recall judge of the Court of Appeals shall not engage in
11 the practice of law during any period for which the emergency recall
12 Court of Appeals judgeship is commissioned. However, this
13 subdivision shall not be construed to prohibit an emergency recall judge
14 of the Court of Appeals appointed pursuant to this section from serving
15 as a referee, arbitrator, or mediator during service as an emergency
16 recall judge of the Court of Appeals so long as the service does not
17 conflict with or interfere with the judge's service as an emergency recall
18 judge of the Court of Appeals.

19 (d) A justice or judge commissioned as an emergency recall judge of the Court of
20 Appeals is also eligible to receive a commission as an emergency special superior court
21 judge. However, no justice or judge who has been recalled as provided in this section
22 shall, during the period so recalled and assigned, contemporaneously serve as an
23 emergency special superior court judge or emergency justice of the General Court of
24 Justice."

25 Sec. 2. G.S. 7A-39.1(b) reads as rewritten:

26 "(b) As used herein, '~~emergency justice~~ or ~~justice~~', '~~emergency judge~~ ~~judge~~', or
27 'emergency recall judge' means any justice of the Supreme Court or any judge of the
28 Court of Appeals, respectively, who has retired subject to recall for temporary service."

29 Sec. 3. This act becomes effective July 1, 1995.