

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 136
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Short Title: Recall Retired Business Court Judge.

(Public)

Sponsors:

Referred to:

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 7A OF THE GENERAL STATUTES TO AUTHORIZE A
RETIRED BUSINESS COURT JUDGE TO BE RECALLED TO SERVE AS A SENIOR
BUSINESS COURT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-45.3 reads as rewritten:

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

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-34 to designate one or more of the special superior court judges authorized by G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice. Any judge so designated shall be known as a Business Court Judge and shall preside in the Business Court. If there is more than one business court judge, including any judge serving as a senior business court judge pursuant to G.S. 7A-52(a1) or upon recall pursuant to G.S. 7A-57, the Chief Justice may designate one of them as the ~~Senior-Chief~~ Business Court Judge. If there is no designation by the Chief Justice, the judge with the longest term of service on the court shall serve as ~~Senior-Chief~~ Business Court Judge until the Chief Justice makes an appointment to the position. The presiding Business Court Judge shall issue a written opinion in connection with any order granting or denying a motion under G.S. 1A-1, Rule 12, 56, 59, or 60, or any order finally disposing of a complex business case, other than an order effecting a settlement agreement or jury verdict."

SECTION 2. G.S. 7A-45.4(c) reads as rewritten:

"(c) A party designating an action as a mandatory complex business case shall file a Notice of Designation in the Superior Court in which the action has been filed, shall contemporaneously serve the notice on each opposing party or counsel and on the Special Superior Court Judge for Complex Business Cases who is then the ~~senior-Chief~~ Business Court Judge, and shall contemporaneously send a copy of the notice by e-mail to the Chief Justice of the Supreme Court for approval of the designation of the action as a mandatory complex business case. The Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of the designation and include a certificate by or on behalf of the designating party that the civil action meets the criteria for designation as a mandatory complex business case pursuant to subsection (a) or (b) of this section."

SECTION 3. G.S. 7A-52 reads as rewritten:

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



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(a) Judges of the district court and judges of the superior court who have not reached the mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the provisions of G.S. 7A-51, or under the Uniform Judicial Retirement Act after having completed five years of creditable service, may apply as provided in G.S. 7A-53 to become emergency judges of the court from which they retired. The Chief Justice of the Supreme Court may order any emergency judge of the district or superior court who, in his opinion, is competent to perform the duties of a judge of the court from which such judge retired, to hold regular or special sessions of such court, as needed. Order of assignment shall be in writing and entered upon the minutes of the court to which such emergency judge is assigned.

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

- (1) The judge is a special superior court judge who is retiring from a term to which the judge was appointed pursuant to G.S. 7A-45.1.
- (2) The judge is retiring from a term for which the judge was assigned by the Chief Justice to hear and decide complex business cases as a business court judge pursuant to G.S. 7A-45.3.
- (3) The judge's nomination to serve a successive term in the same office is pending before the General Assembly, or was not acted upon by the General Assembly prior to adjournment sine die.
- (4) If confirmed and appointed to the successive term of office for which nominated, the judge would reach mandatory retirement age before completing that term of office.

An emergency judge assigned to hear and decide complex business cases pursuant to this subsection shall be designated by the Chief Justice as a senior business court judge and shall be eligible to serve in that capacity for five years from the issuance date of the judge's commission under G.S. 7A-53 or until the judge's commission expires, whichever occurs first. Order of assignment shall be in writing and entered upon the minutes of the court to which such emergency judge is assigned.

(b) In addition to the compensation or retirement allowance the judge would otherwise be entitled to receive by law, each emergency judge of the district or superior court who is assigned to temporary active service by the Chief Justice shall be paid by the State the judge's actual expenses, plus four hundred dollars (\$400.00) for each day of active service rendered upon ~~recall~~ recall, and each emergency judge designated as a senior business court judge pursuant to subsection (a1) of this section shall be paid by the State the judge's actual expenses, plus five hundred dollars (\$500.00) for each day of active service rendered upon recall as a senior business court judge. No day of active service rendered by an emergency judge pursuant to assignment under subsection (a) of this section shall overlap with a day of active service rendered pursuant to assignment under subsection (a1) of this section. No recalled retired trial judge shall receive from the State total annual compensation for judicial services in excess of that received by an active judge of the bench to which the judge is recalled."

SECTION 4. G.S. 7A-57 reads as rewritten:

"§ 7A-57. Recall of active and emergency trial judges who have reached mandatory retirement age.

Superior and district court judges retired because they have reached the mandatory retirement age, and emergency superior and district court judges whose commissions have expired because they have reached the mandatory retirement age, may be recalled to preside over regular or special sessions of the court from which retired under the following circumstances:

- (1) The judge must consent to the recall.
- (2) The Chief Justice is authorized to order the recall.

- 1 (3) Prior to ordering recall, the Chief Justice shall ~~satisfy himself~~ be satisfied that
2 the ~~recalled~~-judge is capable of efficiently and promptly discharging the duties
3 of the office to which recalled.
- 4 (4) Jurisdiction of a recalled retired superior court judge is as set forth in
5 G.S. 7A-48, and jurisdiction of a recalled retired district court judge is as set
6 forth in G.S. 7A-53.1.
- 7 (5) Orders of recall and assignment shall be in writing and entered upon the
8 minutes of the court to which assigned.
- 9 (6) Compensation of recalled retired trial judges is the same as for recalled
10 emergency trial judges under G.S. 7A-52(b).
- 11 (7) Recalled emergency judges who served as a senior business court judge and
12 whose commission expired upon reaching the mandatory retirement age may be
13 recalled by the Chief Justice and assigned to hear and decide complex business
14 cases as a senior business court judge for up to five years from the issuance date
15 of their commission under G.S. 7A-53."

16 **SECTION 5.** G.S. 135-71(c) reads as rewritten:

17 "(c) Notwithstanding any other provision in this Chapter, the retirement allowance of a
18 justice or judge shall not be affected by the compensation received as an emergency justice or
19 judge-judge or as a senior business court judge."

20 **SECTION 6.** Section 3 of this act is effective when it becomes law and applies to
21 judges who retire on or after that date. Section 4 of this act is effective when it becomes law and
22 applies to judges who reach the mandatory retirement age on or after that date. The remainder of
23 this act is effective when it becomes law.