

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 2

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

Sponsors: Senators Berger (Primary Sponsor); Barefoot, Brock, Cook, Curtis, Daniel, J. Davis, Harrington, Hise, Krawiec, Newton, Pate, Rabin, Randleman, Sanderson, Soucek, Tucker, and Wade.

Referred to: Rules and Operations of the Senate.

February 2, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW MAGISTRATES AND REGISTERS OF DEEDS TO RECUSE THEMSELVES FROM PERFORMING DUTIES RELATED TO MARRIAGE CEREMONIES DUE TO SINCERELY HELD RELIGIOUS OBJECTION.

The General Assembly of North Carolina enacts:

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

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

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 The recusing magistrate may not perform any marriage under this Chapter until the recusal is rescinded in writing.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

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 The recusing assistant or deputy register may not issue any marriage license until the recusal is rescinded in writing.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

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

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

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

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



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

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

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

15 "**§ 161-27. Register of deeds failing to discharge duties; penalty.**

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

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

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

22 "**§ 7A-292. Additional powers of magistrates.**

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

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

1       **(b)** The authority granted to magistrates under G.S. 51-1 and subsection (a) of this  
2 section is a responsibility given to the collective magistrates in a county and is not a duty  
3 imposed upon each individual magistrate. The chief district court judge shall ensure that  
4 marriages before a magistrate are available to be performed at least a total of 10 hours per  
5 week, over at least three business days per week."

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

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

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