



SENATE BILL 2: Magistrates Recusal for Civil Ceremonies

2015-2016 General Assembly

Committee:
Introduced by:
Analysis of: S.L. 2015-75

Date:
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SUMMARY: *S.L. 2015-75 established procedures by which a magistrate may recuse himself or herself from performing all lawful marriages and an assistant or deputy register of deeds may recuse himself or herself from issuing all lawful marriage licenses, based upon a sincerely held religious objection. The recusal is for a minimum of six months and continues until the recusal is rescinded in writing. Officials so recusing themselves would not be subject to prosecution for failing to perform the duties imposed upon them by law.*

Each register of deeds must ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge must ensure that marriages performed by a magistrate are available to be performed during at least 10 hours per week over at least 3 business days.

S.L. 2015-75 also provides protection against loss of employment and retirement benefits for magistrates who resigned or were terminated from between October 6, 2014, and June 11, 2015, and who are subsequently reappointed to the position of magistrate within 90 days after June 11, 2015.

This act became effective June 11, 2015.

CURRENT LAW: G.S. 51-8 requires all registers of deeds to issue marriage licenses to persons authorized to be married under the laws of this State. Magistrates are authorized to perform marriage ceremonies pursuant to G.S. 51-1 and G.S. 7A-292. Magistrates (G.S. 14-230) and registers of deeds (G.S. 161-27) are also subject to prosecution for a Class 1 misdemeanor for willfully omitting, neglecting or refusing to discharge any of the duties of his or her office, and are also subject to being discharged from office.

BILL ANALYSIS:

Recusal: The act enacts a new G.S. 51-5.5 granting each magistrate the right to be recused from performing all lawful marriages upon the basis of a sincerely held religious belief, and granting each assistant and deputy register of deeds the right to be recused from issuing all marriage licenses.

The period of recusal is a minimum of six months, beginning with the date on which the magistrate provides notice to the chief district court judge, or the date on which the assistant or deputy register of deeds provides notice to the register of deeds. Until the recusal is rescinded in writing, a recused magistrate is not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds is not be permitted to issue any marriage licenses.

Each register of deeds is required to ensure that marriage licenses are issued to all qualified persons applying for them, and each chief district court judge is required to ensure that all persons issued a marriage license and wishing to be married by a magistrate are able to do so. Magistrates, assistant registers of deeds, and deputy registers of deeds who recuse themselves are not be subject to prosecution

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Senate Bill 2

Page 2

for willful failure to carry out the duties of their office, nor are they be subject to a disciplinary action for a good-faith recusal.

In the event of recusals by all of the magistrates in a jurisdiction, the chief district court judge is required to notify the Administrative Office of the Courts (AOC) and AOC is provide a magistrate for the performance of marriages in that jurisdiction for at least 10 hours over at least three business per week. During any period of time between notification and the AOC's provision of a magistrate, the chief district court judge, or another district court judge designated by the chief district court judge, is be deemed a magistrate for the purposes of performing marriages.

Immunity from Prosecution: S.L. 2015-75 (Senate Bill 2) amends the statutes making it a Class 1 misdemeanor for magistrates and registers of deeds to willfully fail to discharge any duty of their office, to provide immunity from such prosecution for those recusing themselves under new G.S. 51-1.1.

Minimum hours Magistrates Available for Marriage Ceremonies: S.L. 2015-75 (Senate Bill 2) provides that the magistrates' statutory authority to perform marriages is a collective grant of responsibility to all magistrates, is not a duty imposed upon individual magistrates, and each chief district court judge to ensure that marriages before a magistrate are available to be performed each week for at least 10 total hours over three business days.

Certain Re-appointed Magistrates: S.L. 2015-75 (Senate Bill 2) addresses magistrates who resigned or were terminated from their office between October 6, 2014, and June 11, 2015, and permits those individuals to apply for any vacant position of magistrate. Any such magistrate who is reappointed within 90 days after June 11, 2015, is to be credited with the time between their resignation and their resumption of service for purposes of determining employment benefits dependent upon time of service, including calculation of benefits due under the Teachers' and State Employees' Retirement System. The Judicial Department is required to pay both the employee and employer contributions for such reappointed magistrates to the Retirement Systems Division for the period of the break in service.

EFFECTIVE DATE: June 11, 2015.