



SENATE BILL 2: Magistrates Recusal for Civil Ceremonies

2015-2016 General Assembly

Committee: Senate Judiciary II
Introduced by: Sen. Berger
Analysis of: Second Edition

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SUMMARY: *Senate Bill 2 would establish procedures by which magistrates can be recused from performing all lawful marriages and assistant and deputy registers of deeds can be recused from issuing all lawful marriage licenses, based upon any sincerely held religious objection. The recusal would be for a minimum of six months and would continue until the recusal is rescinded in writing.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 would be required to ensure that all qualified applicants for marriage licenses are issued a license, and each chief district court judge would be required to ensure that marriages performed by a magistrate are available to be performed during at least ten hours per week over at least three business days.

The bill would also provide protection against loss of employment and retirement benefits for magistrates who resigned or were terminated from their position between October 6, 2014 and the effective date of this act, and who are subsequently reappointed to the position of magistrate within 90 days after the act's effective date.

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: Section 1 would enact 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 would be 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 would not be permitted to perform any marriage ceremonies and a recused assistant or deputy register of deeds would not be permitted to issue any marriage licenses.

Each register of deeds would be required to ensure that marriage licenses are issued to all qualified persons applying for them, and each chief district court judge would be 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 would not be subject to prosecution for willful failure to carry out the duties of their office, nor would 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, then upon notification of that fact by the chief district court judge, the Administrative Office of the Courts (AOC) would be required to ensure

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the availability of a magistrate in that jurisdiction for performance of marriages for at least ten hours each week over at least three business days 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, would be deemed a magistrate for the purposes of performing marriages.

Sections 2 and 3 of the bill would amend current 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.

Section 4 of the bill would amend G.S. 7A-292 by adding a new subsection (b) to provide that the magistrates' statutory authority to perform marriages is a collective grant of responsibility to all magistrates and is not a duty imposed upon individual magistrates. This new subsection would also require 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.

Under Section 5 of the bill, magistrates who resigned or were terminated from their office between October 6, 2014, and the effective date of this act, would be permitted to apply for any vacant position of magistrate. Any such magistrate who is reappointed within 90 days after the effective date of this act would 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 would be 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: This act is effective when it becomes law.

BACKGROUND: On October 6, 2014, the United States Supreme Court declined to hear an appeal from a decision by the Fourth Circuit Court of Appeals striking down Virginia's ban on same-sex marriage.¹ On October 14, 2014, a federal district court judge issued a ruling declaring unconstitutional the State constitution's ban on same-sex marriage approved by voters in 2012.² Following these rulings, a number of State magistrates resigned from their positions on the basis of their religious objection to same-sex marriage.

¹ Rainey v. Bostic, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014)

² Fisher-Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C.2014).