

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-104
SENATE BILL 118**

AN ACT TO ALLOW THE GOVERNOR TO DECLARE A VACANCY IN THE OFFICE OF DISTRICT COURT JUDGE, SUPERIOR COURT JUDGE, JUDGE OF THE COURT OF APPEALS, JUSTICE OF THE SUPREME COURT, OR DISTRICT ATTORNEY WHEN THE INCUMBENT DOES NOT HAVE THE LEGAL RIGHT TO EXERCISE ITS FUNCTIONS.

The General Assembly of North Carolina enacts:

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

"Article 31B.

"Declaration of Vacancy, Suspension of Salary.

"§ 7A-410. Vacancy exists on disbarment.

When a judge of the district court, judge of the superior court, judge of the Court of Appeals, justice of the Supreme Court, or a district attorney is no longer authorized to practice law in the courts of this State, the Governor shall declare the office vacant. Prior to making such declaration, the Governor shall notify the justice, judge, or district attorney at least 10 days in advance of taking such action and shall afford the justice, judge, or district attorney the opportunity to be heard on the matter. For purposes of this Article, the term 'no longer authorized to practice law' means that the person has been disbarred or suspended and all appeals under G.S. 84-28 have been exhausted.

"§ 7A-410.1. Suspension of salary.

When a justice, judge, or district attorney has been disbarred or suspended from the practice of law under G.S. 84-28 but the office has not been declared vacant under G.S. 7A-410, the salary of the justice, judge, or district attorney is suspended immediately. If the order of disbarment or suspension is reversed on appeal, the salary shall be paid retroactively from the date the salary was suspended."

SECTION 2. G.S. 1-524 reads as rewritten:

"§ 1-524. Possession of office not disturbed pending trial.

(a) In any civil action pending in any of the courts of this State in which the title to an office is involved, the defendant being in the possession of the office and discharging the duties thereof shall continue therein pending the action, and no judge shall make a restraining order interfering with or enjoining such officer in the premises. The officer shall, notwithstanding any such order, continue to exercise the duties of the office pending the litigation, and receive the emoluments thereof.

(b) This section shall not apply to any person subject to Article 31B of Chapter 7A of the General Statutes."

SECTION 3. This act is effective when it becomes law and does not apply to persons elected to or serving in the capacity of justice or judge on or before January 1, 1981, that were not authorized to practice law at the time of their election or at the time they began serving in the capacity of justice or judge.

In the General Assembly read three times and ratified this the 21st day of June, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:25 p.m. this 21st day of June, 2007