

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE DRS35044-LB-22A (1/16)**

Short Title: Removal of Unqualified Judges and DAs. (Public)

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Sponsors: Senator Rand.

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Referred to:

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A BILL TO BE ENTITLED

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.

Whereas, the North Carolina Supreme Court in State ex rel. Atkins v Fortner, 236 NC 264 (1952) declared that an office is vacant when there is no incumbent who has the legal right to exercise its functions; and

Whereas, Article IV, Section 22 of the North Carolina Constitution requires that a person must be duly authorized to practice law in the courts of this State in order to hold judicial office and Article IV, Section 18 has a similar requirement for District Attorney; and

Whereas, procedures for impeachment or removal are unnecessary in cases where an officer has been disbarred as it is solely a factual determination; and

Whereas, Article IV of the Constitution provides that the Governor shall appoint to fill vacancies in superior court, the Court of Appeals, the Supreme Court, and district attorney, and by statute the Governor fills vacancies in district court; and

Whereas, it would be most appropriate to have the officer responsible for filling a vacancy declare, after due process, that a vacancy exists in such office; Now, therefore,

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.

1        When a judge of the district court, judge of the superior court, judge of the Court of  
2 Appeals, justice of the Supreme Court, or a district attorney is no longer authorized to  
3 practice law in the courts of this State, the Governor may declare the office vacant. Prior  
4 to making such declaration, the Governor shall notify the justice, judge, or district  
5 attorney at least 10 days in advance of taking such action and shall afford the justice or  
6 judge the opportunity to be heard on the matter.

7        **"§ 7A-410.1. Suspension of salary.**

8        When a justice, judge, or district attorney has been disbarred or suspended from the  
9 practice of law under G.S. 84-28 but has not yet been removed from office, the salary of  
10 the justice, judge, or district attorney is suspended immediately. If the order of  
11 disbarment or suspension is reversed on appeal, the salary shall be paid retroactively  
12 from the date the salary was suspended."

13        **SECTION 2.** This act is effective when it becomes law.