

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 206

Senate Bill No. 105
(Judiciary Committee)

**RETIREMENT OF JUDGES OF SUPREME AND
DISTRICT COURT JUDGES****AN ACT**

For the retirement of justices of the supreme court and judges of the district court; providing for an assessment on salaries of such judges; providing for the withdrawal of a portion of the amount so assessed on retirement from office without becoming eligible for retirement salary; prescribing duties that such retired judges shall be eligible to perform and fixing their compensation.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. RETIREMENT OF SUPREME COURT JUDGES AND DISTRICT COURT JUDGES.) When a judge of the supreme court or a judge of the district court in this state has attained the age of seventy years and has served as such judge of the supreme court or judge of the district court for eighteen years or more, he shall be eligible for retirement under the provisions of this act. Any such judge who is, or who may become eligible for retirement, may make an application to the governor for such voluntary retirement, and the governor shall, if he finds that such judge is eligible for retirement, direct such retirement by written order, which order when filed in the office of the secretary of state, shall create a vacancy in said office, to be filled in the manner provided by law.

Provided, that the provisions of this act shall apply to judges who are retired either voluntarily or otherwise, under the provisions of any act providing for the retirement of judges for permanent physical or mental disability.

SECTION 2. RETENTION OF ASSESSMENTS FROM JUDGES' SALARIES; WITHDRAWAL OF SUMS SO RETAINED.) Every judge of the supreme court and of the district court shall, from the effective date of this act, pay an assessment of five per cent of his salary into the general fund of the state, which said assessment shall be

deducted from the salary of such judge and be retained by the state of North Dakota.

Provided further, that any judge of the supreme court or of any of the district courts of the state of North Dakota, who shall be retired from office, without becoming eligible for retirement pay under the provisions of this act, within one year of such retirement from office, upon making written application therefor, shall be entitled to a return of one-half of the amount he has paid into the fund, and which has been withheld from his salary as herein provided, without interest.

Provided further, that if any former judge, after having withdrawn one-half of such amount so paid and retained, while holding office as such judge of the supreme court or district court, shall thereafter become a judge of the supreme court or of a district court of this state, he shall return to the fund within one year after becoming such supreme court or district court judge, the amount withdrawn by him, with simple interest at the rate of four per cent from the time of such withdrawal.

Provided, that if any judge of the supreme court or district court shall die before retirement as provided for in this act, his administrator or executor shall be entitled to receive a refund of one-half of the amount retained from the salary of such judge, which claim shall be made within one year after the death of such judge and shall be filed with the state auditor of the state of North Dakota.

Provided further, that any judge who shall have served a combined total of eighteen years as a district and supreme court judge, shall be eligible for retirement under the provisions of this act and shall receive the retirement salary hereinafter provided for.

SECTION 3. DUTIES OF RETIRED JUDGES.) Upon the retirement of a judge of the supreme court or a judge of the district court, the supreme court may appoint him a commissioner of that court to aid and assist the court in the performance of such duties as may be assigned to him with his consent, but he shall not participate, directly or indirectly, in the decision of any case or other judicial controversy coming before the court for determination. Any such retired judge shall also be eligible to serve as a referee in any civil case or other judicial proceeding when so designated by the court having power to appoint referees; he may also, when requested, serve as legal counsel in the office of the attorney general, in any executive department, commission or bureau of the state and for any committee of the legislative assembly.

SECTION 4. SALARY OF RETIRED JUDGES.) Any such retired judge shall, for the remainder of his life, receive an annual salary

equal to one-half of the salary provided by law for his office at the time of his retirement, which salary shall be paid monthly as other judicial salaries are paid, and which said salary shall not be subject to an assessment of five per cent as provided for by section 2 of this act.

Approved March 7, 1949.

CHAPTER 207

Senate Bill No. 103
(Judiciary Committee)

RETIREMENT OF SUPREME AND DISTRICT COURT JUDGES

AN ACT

To amend and reenact Sections 27-05031 and 27-05032 of the 1947 Supplement to the North Dakota Revised Code of 1943, providing for the retirement of judges of the supreme court and the district court, providing the manner of making application therefor, and providing for compensation in case of retirement, the method of filling vacancies.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. AMENDMENT.) Section 27-05031 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

27-05031. RETIREMENT OF SUPREME COURT JUDGES AND DISTRICT COURT JUDGES.) Whenever a judge of the supreme court or a judge of the district court in this state become unable, because of permanent disability, to perform the judicial duties of his office during the remainder of the term for which he shall have been elected, and shall make a written application to the governor for his retirement, setting forth the nature and extent of such disability, the governor shall make such investigation as he shall deem advisable, and if he shall thereby determine that such disability exists, and that the public service is injured and will continue to be injured by reason of such disability, he shall thereupon by written order, to be filed in the office of the secretary of state, direct the retirement of such judge for the unexpired portion of the term for which such judge was elected, which retirement shall create a vacancy in said office, and which vacancy shall be filled by appointment as provided by law. Provided, that when the disability is mental and to an extent that renders

such judge incompetent to make such application, the same may be made by the legally appointed guardian of such judge.

SECTION 2. AMENDMENT.) Section 27-05032 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

27-05032. COMPENSATION OF RETIRED JUDGE.) When a judge of the supreme court or a judge of the district court shall be retired under the provisions of this act, he shall receive the compensation allotted to his office for the remainder of his said term.

Approved March 17, 1949.

CHAPTER 208

House Bill No. 101
(Bubel and Brickner)

COURT REPORTERS; SALARY AND EXPENSE

AN ACT

To amend and reenact Section 27-0602 of the 1947 Supplement to the North Dakota Revised Code of 1943, relating to salary and expense of court reporters.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. AMENDMENT.) Section 27-0602 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

27-0602. SALARY AND EXPENSE OF COURT REPORTERS.) Each court reporter shall receive a salary of three thousand five hundred dollars per annum, payable in equal monthly installments by the counties constituting the judicial district in which such reporter is employed. Such salary shall be apportioned according and in proportion to the number of suits entered and commenced in the district court of the respective counties of such district in the preceding year. The presiding judge of each judicial district, on the first day of January of each year, or as soon thereafter as may be, shall apportion the amount of such salary to be paid by each county in his district on the basis aforesaid, and the county auditors of the respective counties in such judicial district shall issue to the order of such court reporter a warrant for the amount shown to be due by such apportionment. As reimbursement for expenses incurred in the performance of official duties outside of the county where the district court chambers are situated, the court reporter shall receive for actual living expenses a

sum not to exceed four dollars per day for meals, and in addition thereto actual lodging expenses not to exceed four dollars per day, and actual transportation expenses. Such sums shall be paid monthly by the county wherein such court reporter is attending to such official duties, when approved by the board of county commissioners, upon itemized statements submitted by him and supported by sub-vouchers or receipts as provided by section 21-0501 of the North Dakota Revised Code of 1943, and that all claims for actual transportation expense shall not exceed the amounts provided by section 54-0609 of the North Dakota Revised Code of 1943, and shall be in itemized form showing the mileage traveled, the days when and how traveled, and the purpose thereof, and verified by his affidavit. Provided, however, that no claim for actual living expenses or actual transportation expenses shall be approved for payment to a court reporter by the board of county commissioners unless such claim shall have been first approved by the district judge.

Approved March 19, 1949.

CHAPTER 209

Senate Bill No. 162
(Senators Nordhougen and Duffy)

FEEES AND MILEAGE FOR JURORS

AN ACT

To amend and reenact section 27-0905 of the North Dakota Revised Code of 1943, relating to fees and mileage of jurors.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. AMENDMENT.) Section 27-0905 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

27-0905. FEES AND MILEAGE OF JURORS.) A juror shall receive:

1. Six dollars, payable by the county, for each day's attendance in district or county court as a regular or special juror;
2. Traveling expenses, payable by the county, of seven and one-half cents per mile for each mile actually and necessarily traveled each way;
3. Two dollars for each day's attendance as a juror in justice court; and
4. Two dollars, payable by the county, for each day's attendance at a coroner's inquest.

Approved March 5, 1949.

CHAPTER 210

House Bill No. 173
(Murray and Graham)

NEW NAMES FOR LIST OF PERSONS QUALIFIED AS JURORS

AN ACT

To amend and reenact section 27-0912 of the North Dakota Revised Code of 1943, relating to new names supplied for list of names of persons qualified as jurors after each jury term.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. AMENDMENT.) Section 27-0912 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

27-0912. NEW NAMES SUPPLIED FOR LIST OF NAMES OF PERSONS QUALIFIED AS JURORS AFTER EACH JURY TERM; GROUND FOR CHALLENGE.) In each county, the list of the two hundred names of persons qualified to act as jurors, when possible, shall be kept full at all times by completing the number after each jury term of court. At the end of each jury term of the district court of a county, the clerk thereof, in order to keep such list full, shall make a requisition upon the county commissioners for the furnishing of as many names as were drawn to make up the jury at such term. At its first meeting following the receipt of such requisition, the board of county commissioners shall proceed to apportion such names in the manner hereinbefore provided for making up the whole of such list. Such names shall be selected in the manner in which the original list of names is selected, except that the posting of notices shall not be required and that the board of supervisors of any township, the city council or board of city commissioners of any city, or the board of trustees of any village need not be specially called to draw any such names but may do so at its next regular meeting. A failure to comply with any of the provisions of this section shall be ground for challenge of any juror who has served as a juror within five years next preceding the time when he is called to serve as a juror in either a civil or criminal case.

Approved March 11, 1949.

CHAPTER 211

Senate Bill No. 146
(Day, Schrock, Troxel)

JUVENILE COMMISSIONER; APPOINTMENT; POWERS

AN ACT

To amend and reenact section 27-1602 of the North Dakota Revised Code of 1943, relating to juvenile commissioners.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. AMENDMENT.) Section 27-1602 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

27-1602. JUVENILE COMMISSIONER; APPOINTMENT; POWERS.) The judges of each judicial district may appoint not more than two suitable and discreet persons of good moral character as juvenile commissioners for each county of the judicial district, but the number of said juvenile commissioners so appointed shall be based upon the need therefor as determined by the judges of each judicial district. Each juvenile commissioner so appointed shall have the powers generally conferred upon referees by chapter 17 of the title Judicial Procedure, Civil, and also shall have power to:

1. Administer oaths;
2. Take acknowledgements of instruments, for the purposes of this chapter;
3. Receive complaints and have warrants issued within the provisions of this chapter;
4. Examine fully into the merits of each case;
5. Issue summonses and subpoenas for hearings within the provisions of this chapter. Such hearings may be held at any place within the county where the proceeding is commenced;
6. Compel the attendance of witnesses before him and report any witness or witnesses to one of the judges of the judicial district for nonattendance or refusal to be sworn or to testify as provided by section 27-1023; and
7. Make such temporary order for the custody and control of a child as he may deem proper.

Upon petition of the board of county commissioners of any county asking that a juvenile commissioner be appointed for the county, the judge of the district court shall appoint a juvenile commissioner for such county.

Approved March 8, 1949.

CHAPTER 212

House Bill No. 292
(Graham, Stormon and Haugland)

TERMINATION OF PARENTAL RIGHTS BY JUVENILE COURT
AN ACT

To authorize the juvenile court to terminate parental rights in certain cases providing the procedure therefor; providing for the supervision, custody, and consent to adoption of children in such cases; providing for the appointment of guardians ad litem; and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. TERMINATION OF PARENTAL RIGHTS IN JUVENILE PROCEEDINGS: TRANSFER OF CONTROL AND CUSTODY OF CHILD.) Whenever in the court of a proceeding instituted under sections 27-1611, 27-1612, and 27-1621, of the North Dakota Revised Code of 1943, or otherwise, it shall appear to the court that the parent or parents of a child have abandoned such child or have substantially and continuously or repeatedly refused, or being financially able, have neglected to give such child parental care and protection, or whenever it shall appear to the court that the parents or surviving parent are not fit or proper parents by reason of any of the grounds set forth in section 27-1627 of the North Dakota Revised Code of 1943, and said conduct is found by the court as likely to be detrimental to the health, morals, or well-being of said child, a juvenile court in the judicial district of the parents' residence or of the county where the child is born or is found shall have jurisdiction to transfer the care, control, and custody of such child to the director of the division of child welfare of the public welfare board, to a licensed child-placing agency, or to some suitable adult person named by the court, and in the exercise of such jurisdiction the court may terminate all rights of the parents with reference to such child. A termination of the rights of one parent may be made without affecting the rights of the other parent should the evidence so warrant.

SECTION 2. HEARING AND SERVICE OF NOTICE THEREON.) Such transfer of the permanent care, control, and custody of a child and the termination of the rights of the parents with reference to the child shall be made only after a special hearing before the court and the court shall cause notice of the time, place, and purpose of such hearing to be served within or without the state on the parents or surviving parent or the father of an illegitimate child against whom paternity has been duly adjudged, upon the general

guardian of any such child, upon a general guardian of the mother of an illegitimate child, the general guardian of the father of an illegitimate child against whom paternity has been duly adjudged and on the director of the division of child welfare of the public welfare board for at least ten days prior to the date of the hearing. When it appears to the satisfaction of the court that personal service cannot be obtained, then by publication thereof in a newspaper in the county once a week for three consecutive weeks prior to the date of the hearing.

SECTION 3. TERMINATION OF PARENTAL RIGHTS UPON APPLICATION OF PARENTS.) Upon the application of the parents or of the surviving parent of any child, or of the mother of an illegitimate child, when paternity has not been adjudicated, a juvenile court in the judicial district of the parents' residence or of the county where the child is born or is found may, after notice to the director of the division of child welfare of the public welfare board, or upon good cause shown, order the transfer of the care, control, and custody of such child to the director of the division of child welfare of the public welfare board, to a licensed child-placing agency, or to some suitable adult person named by the court, and if it appears to be for the best interests of the child, the court may order the termination of all the rights of a parent with reference to such child.

SECTION 4. GENERAL GUARDIAN AND GUARDIAN AD LITEM, SERVICE ON.) In any proceeding had under any of the provisions of this act in which a parent is a minor or incompetent and for whom no general guardian has been appointed, the court shall appoint a guardian ad litem. All notices required to be served under the provisions of this act upon the parent or parents of such minor or incompetent, or upon the mother of an illegitimate child shall be served also upon such general guardian or guardian ad litem.

SECTION 5. PROCEEDINGS UPON TERMINATION OF PARENTAL RIGHTS.) Upon the termination of all parental rights, the child shall become a ward of the state and the director of the division of child welfare of the public welfare board shall be the representative of the state in all matters concerning said child. He shall have authority to give consent to the adoption of said child with the same force and effect as a consent given by the legal parent or parents. Where the custody of the child is placed with a licensed child-placing agency or some suitable person named by the court, due regard shall be given to the religious faith held by the parent or parents of the child and so far as it is practicable the child shall be placed in a child-caring agency or adult person of the same religious faith as that held by the parent or parents of

the child. The jurisdiction of the court shall continue until the child is adopted or becomes of age.

SECTION 6. ORDER UPON TRANSFERRING CUSTODY AND TERMINATING PARENTAL RIGHTS.) Every order of the juvenile court transferring the care, control, and custody of a child and terminating the rights of the parents or either parent with reference to a child shall be in writing and shall recite all the jurisdictional facts, and every such order shall be filed forthwith with the clerk of the juvenile court of such county, and two certified copies thereof sent to the director of the division of child welfare of the public welfare board.

SECTION 7. APPEAL AND STAY OF EXECUTION.) In every case where the juvenile court shall determine and adjudge the transfer of the care, control, and custody of a child or the termination of the rights of a parent or the parents with reference to such child, appeal may be taken in the manner as provided for appeals in civil actions except that no undertaking shall be required. On appeal, the case shall be triable anew in the supreme court. The judgment of said juvenile court shall stand, pending the determination of such appeal, but the court may stay the execution of said judgment pending such appeal, upon such conditions as the court may prescribe.

SECTION 8. RECORDS NOT OPEN TO INSPECTION.) The files and records of the court in any proceedings had under any of the provisions of this act shall not be open to inspection or copy by persons other than the parties interested, their attorneys, and representatives of the division of child welfare of the public welfare board, except upon an order of the court expressly permitting same.

SECTION 9. EMERGENCY.) This act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1949.