

Sec. 3. This Act shall become effective from and after its ratification. In the General Assembly read three times and ratified, this the 2nd day of May, 1961.

S. B. 149 CHAPTER 312

AN ACT TO PERMIT INVITED GUESTS OF THE OWNERS TO FISH IN PRIVATE PONDS WITHOUT LICENSES.

*The General Assembly of North Carolina do enact:*

Section 1. G. S. 113-143 is amended by adding at the end thereof the following:

“Provided, that fishing licenses shall not be required of persons who are the invited guests of the owners of private ponds, and who are fishing at the specific invitation of the owner. Private ponds are defined as bodies of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common, and from which fish cannot escape, and into which fish of legal size cannot enter from public waters at any time.”

Sec. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 3. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 2nd day of May, 1961.

H. B. 104 CHAPTER 313

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA BY REWRITING ARTICLE IV THEREOF AND MAKING APPROPRIATE AMENDMENTS OF OTHER ARTICLES SO AS TO IMPROVE THE ADMINISTRATION OF JUSTICE IN NORTH CAROLINA.

*The General Assembly of North Carolina do enact:*

Section 1. The Constitution of North Carolina is amended by rewriting Article IV thereof to read as follows:

“ARTICLE IV.

“JUDICIAL DEPARTMENT.

“Section 1. Division of judicial power. The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

“Sec. 2. General Court of Justice. The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction,

operation, and administration; and shall consist of an appellate division, a Superior Court division, and a District Court division.

“Sec. 3. Judicial powers of administrative agencies. The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

“Sec. 4. Court for the Trial of Impeachments. The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant-Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

“Sec. 5. Appellate Division. The appellate division of the General Court of Justice shall consist of the Supreme Court.

“Sec. 6. Supreme Court.

“(1) Membership. The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available is authorized to discharge such duties. The General Assembly may provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

“(2) Sessions of the Supreme Court. The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

“Sec. 7. Superior Courts.

“(1) Superior Court districts. The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

“(2) Open at all times; sessions for trial of cases. The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

“(3) Clerks. A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

“Sec. 8. District Courts. The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit; but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner provided by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled, for the unexpired term, in a manner provided by law. Vacancies in the office of Magistrate shall be filled, for the unexpired term, in the manner provided for original appointment to the office.

“Sec. 9. Assignment of Judges. The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

“Sec. 10. Jurisdiction of the General Court of Justice.

“(1) Supreme Court. The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over ‘issues of fact’ and ‘questions of fact’ shall be the same exercised by it prior to the adoption of this Article, and the Court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the other courts. The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; the decisions shall be reported to the next Session of the General Assembly for its action.

“(2) Superior Court. Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall provide by general law uniformly applicable in every county of the State.

“(3) District Courts; Magistrates. The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

“(4) Waiver. The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

“(5) Appeals. The General Assembly shall, by general law, provide a proper system of appeals: Provided, that appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

“Sec. 11. Forms of action; rules of procedure.

“(1) Forms of action. There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action.

“(2) Rules of procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the appellate division. The General Assembly shall have authority to make rules of procedure and practice for the Superior Court and District Court divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court divisions.

“Sec. 12. Waiver of jury trial. In all issues of fact joined in any court, the parties in any civil case may waive the right to have the same determined by a jury; in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

“Sec. 13. Administration. The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

“Sec. 14. Term of office and election of Justices of Supreme Court and Judges of Superior Court. Justices of the Supreme Court and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court shall be elected by the qualified voters of the State. Regular Judges of the Superior Court

may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may provide.

“Sec. 15. Removal of judges and clerks.

“(1) Justices of Supreme Court and Judges of Superior Court. Any Justice of the Supreme Court or Judge of the Superior Court may be removed from office for mental or physical incapacity by joint resolution of two-thirds of both houses of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon. Removal from office for any other cause shall be by impeachment.

“(2) District Judges and Magistrates. The General Assembly shall provide by general law for the removal of District Judges and Magistrates for misconduct or mental or physical incapacity.

“(3) Clerks. Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least ten days before the hearing upon the charges. Clerks of District Courts shall be removed for such causes and in such manner as the General Assembly may provide by general law. Any clerk so removed from office shall be entitled to an appeal as provided by law.

“Sec. 16. Solicitors and solicitorial districts.

“(1) Solicitors. The General Assembly shall, from time to time, divide the State into a convenient number of solicitorial districts, for each of which a Solicitor shall be chosen for a term of four years by the qualified voters thereof, as is prescribed for members of the General Assembly. When the Attorney General determines that there is serious imbalance in the work loads of the Solicitors, or that there is other good cause, he shall recommend redistricting to the General Assembly. The Solicitor shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

“(2) Prosecution in District Court division. Criminal actions in the District Court division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

“Sec. 17. Vacancies. Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than thirty days after such vacancy occurs, when elections shall be held to fill such offices: Provided, that when the unexpired term of any of the offices named in this Article of the Constitution in which such vacancy

has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of said offices shall neglect and fail to qualify, such office shall be appointed to, held, and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.

“Sec. 18. Revenues and expenses of the judicial department. The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

“Sec. 19. Fees, salaries, and emoluments. The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article; but the salaries of judges shall not be diminished during their continuance in office. In no case shall the compensation of any judge or magistrate be dependent upon his decision or upon the collection of costs.

“Sec. 20. Effect of uniform general law requirement. Where the General Assembly is required by the provisions of this Article to enact only general laws uniformly applicable throughout the State or in every county or local court district thereof, no special, public-local, or private law shall be enacted relating to the subject-matter of those provisions, and every amendment or repeal of any law relating to such subject-matter shall also be general and uniform in its application and effect throughout the State.

“Sec. 21. Schedule. Immediately upon the certification by the Governor to the Secretary of State of the amendments constituting this Article, the Supreme Court and the Superior Courts shall be incorporated within the General Court of Justice, as provided in this Article. All Justices of the Supreme Court and Judges of the Superior Court shall continue to serve as such within the General Court of Justice for the remainder of their respective terms.

“The statutes and rules governing procedure and practice in the Superior Courts and inferior courts, in force at the time the amendments constituting this Article are ratified by the people, shall continue in force until superseded or repealed by rules of procedure and practice adopted pursuant to Section 11(2) of this Article.

“Upon certification of the Governor to the Secretary of State of the amendments constituting this Article, the General Assembly shall proceed, as rapidly as practicable, to provide for the creation of local court districts and the establishment of District Courts therein; District Courts shall be established to serve every county of the State by not later than January 1, 1971. As of January 1, 1971, all previously existing courts inferior to the Superior Court shall cease to exist, and cases pending in

these courts shall be transferred as provided in the next succeeding paragraph of this Section. Until a District Court has been thus established to serve a county, all of the courts of that county, including the Superior Court, shall continue to be financed and the revenues of these courts shall continue to be paid as they were immediately prior to the certification of the amendments constituting this Article; and the laws and rules governing these courts and appeals from the inferior courts to the Superior Court shall continue in force and shall be deemed to comply with the provisions of this Article.

“As soon as a District Court shall have been established for a county, all of the provisions of this Article shall become fully effective with respect to the courts in that county, and all previously existing courts inferior to the Superior Court shall cease to exist. All cases pending in these inferior courts shall be transferred to the appropriate division of the General Court of Justice, and all records of these courts shall be transferred to the appropriate clerk’s office pursuant to rule of the Supreme Court. Judges of these inferior courts, except mayors’ courts and justice of the peace courts, shall become District Judges and shall serve as such for remainders of their respective terms.

“As soon as a District Court has been established to serve every county of the State, all of the provisions of this Article shall become fully effective throughout the State.”

Sec. 2. The Constitution of North Carolina is amended by renumbering Article I, Section 37, as Article I, Section 38, and by inserting in Article I an additional Section, to be designated Section 37, which shall follow immediately after Section 36, and which shall read as follows:

“Sec. 37. Treason against the State. Treason against the State shall consist only in levying war against it or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.”

Sec. 3. The Constitution of North Carolina is amended by striking from Article II, Section 29 thereof the words “relating to the establishment of courts inferior to the Superior Court; relating to the appointment of justices of the peace;” which follow immediately the word “resolution” in Section 29.

Sec. 4. The Constitution of North Carolina is amended by striking out Section 5 of Article VII, and by inserting a new Section 5 to read as follows:

“Sec. 5. Sheriffs. In each county a Sheriff shall be elected by the qualified voters thereof as is prescribed for members of the General Assembly, and shall hold his office for a period of four years. In case of a vacancy existing for any cause in any Sheriff’s office, the governing authority of the county shall fill such vacancy by appointment for the unexpired term.”

Sec. 5. The Constitution of North Carolina is amended by striking out Sections 6, 9, and 10 of Article VII, and renumbering the succeeding Sections of Article VII appropriately.

Sec. 6. The Constitution of North Carolina is amended by rewriting and renumbering Article VII, Section 13 thereof to read as follows:

“Sec. 10. Powers of General Assembly over municipal corporations. The General Assembly shall have full power by statute to modify, change, or abrogate any and all of the provisions of this Article, and substitute others in their place, except Sections 5, 6, 7, and 9.”

Sec. 7. The Constitution of North Carolina is amended by rewriting Article XIV, Section 7, thereof to read as follows:

“Sec. 7. Dual office-holding. No person who shall hold any office or place of trust or profit under the United States or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, commissioners of public charities, or commissioners for special purposes.”

Sec. 8. The amendments set out in Sections 1 through 7 of this Act shall be submitted to the qualified voters of the State at the next general election. Voting on these amendments shall be conducted under the laws now governing general elections in this State.

Sec. 9. In such election the voters favoring these amendments shall vote ballots on which shall be printed or written the words: “FOR constitutional amendments revising the structure and functioning of the Judicial Department of North Carolina”; and those opposed shall vote ballots on which shall be printed or written the words: “AGAINST constitutional amendments revising the structure and functioning of the Judicial Department of North Carolina.”

Sec. 10. If a majority of the votes cast thereon be in favor of these amendments, the Governor shall certify the amendments under the Great Seal of the State to the Secretary of State, who shall enroll the amendments so certified among the permanent records of his office, and the amendments so certified shall be in full force and effect from and after the date of certification.

Sec. 11. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 12. This Act shall take effect immediately upon its ratification.

In the General Assembly read three times and ratified, this the 2nd day of May, 1961.