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HOUSE BILL 2951
By Stanley

SENATE BILL 3522
By Black

AN ACT to amend Tennessee Code Annotated, Title 25, Chapter 1, Part 1, relative to conduct of judges.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 25, Chapter 1, Part 1, is amended by adding the following as a new section thereto:

§25-1-109.

(a) Except when all parties to a civil action have waived trial by jury, the jury shall be the exclusive finder of all facts necessary to determination of the case.

(b) Where a jury is empanelled to try a case, the judge or chancellor shall be excluded from either finding facts or passing on the weight of evidence in such a way as to question, doubt or otherwise disturb or interfere with a jury's verdict, either by a judgment notwithstanding the verdict, by a directed verdict, by an order granting a new trial, by an order granting an additur or remittur, by a threat or a conditional grant of a judgment notwithstanding verdict or directed verdict or a new trial dependant on a party's consent to an additur or remittur.

(c) Any rule or common law of Tennessee empowering a trial judge or chancellor or an appellate judge or justice to act as a thirteenth juror is hereby repealed.

(d) All persons who enjoy judicial immunity as adjudicators in Tennessee, at all levels in every court and/or arbitrators, shall sparingly resort to judicial discretion as a reason for any ruling, interlocutory or final, and, when judicial discretion is so employed, the adjudicator, then and there and as a matter of record, shall state in writing why the adjudicator is resorting to judicial discretion rather than positive law requiring the adjudicator to rule in a particular way, and shall justify the reasons stated by the

adjudicator's research results establishing that the adjudicator had no choice but to resort to judicial discretion as the basis for the ruling.

(e) A violation of the *Rules of the Supreme Court of the State of Tennessee*, Rule 10, Code of Judicial Conduct, Canon 3B(2), reading: "A judge shall be faithful to the law* and maintain professional competence in it.", by any person who enjoys judicial immunity as an appellate or trial level or hearing level or arbitrabial adjudicator in Tennessee who, makes a ruling, interlocutory or final, that deviates from rule of law shall be deemed to have engaged in judicial misconduct that shall require the Court of the Judiciary to discipline the adjudicator, irrespective of, and without regard to, the disposition of the case, trial or an appeal, and irrespective of whether the deviation caused harm to any party; provided, if an adjudicator can present clear and convincing evidence that, before ruling, the adjudicator competently and thoroughly researched the law on the question controlling the adjudicator's ruling and, before the ruling, was able to cite uncontradicted and controlling precedent, statutes or rules of procedure dictating the ruling or confirming that there existed no precedent on point because the question was one of first impression, an adjudicator may be excused even if a ruling is later determined to have departed from rule of law; provided, further, a ruling that is based on selective reliance on some precedent and ignores other precedent, or based on an illogical interpretation of a statute or rule of procedure to facilitate reaching a result in a case thought by the adjudicator to be unachievable by strict adherence to and with precedent with more authority, or without effort to reconcile arguably controlling precedent that plausibly leads to different conclusions, shall be deemed flagrant judicial misconduct.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.