

Amendment No. 2 to SB2671

Beavers
Signature of Sponsor

AMEND Senate Bill No. 2671*

House Bill No. 2935

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 17-5-201, is amended by deleting the section in its entirety and substituting instead the following:

(a) Notwithstanding any other law to the contrary, the court of the judiciary is dissolved effective July 1, 2012, and the terms of the present members of the court of the judiciary shall terminate on such date. On that date, there is created the board of judicial conduct to consist of sixteen (16) members to be selected in the following manner:

(1) One (1) current or former trial judge from each grand division, to be appointed by the Tennessee judicial conference;

(2) One (1) current or former general sessions court judge from each grand division, to be appointed by the Tennessee general sessions judges conference;

(3) One (1) current or former municipal court judge, to be appointed by the Tennessee municipal judges conference;

(4) One (1) current or former juvenile court judge, to be appointed by the Tennessee council of juvenile and family court judges;

(5) Two (2) current or former court of appeals or court of criminal appeals judges, with one (1) being appointed by the speaker of the house of representatives and one (1) being appointed by the speaker of the senate, from a list of six (6) recommended by the Tennessee judicial conference;

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(6) Two (2) members of the public who are not judges, one (1) of whom shall be an attorney who regularly practices in the courts of this state and may be a member of the district attorneys general conference or a member of the district public defenders conference, and one (1) of whom shall be neither a judge nor an attorney, to be appointed by the speaker of the senate;

(7) Two (2) members of the public who are not judges, one (1) of whom shall be an attorney who regularly practices in the courts of this and state and may be a member of the district attorneys general conference or a member of the district public defenders conference, and one (1) of whom shall be neither a judge nor an attorney, to be appointed by the speaker of the house of representatives; and

(8) Two (2) members of the public who are not judges, one (1) of whom shall be a attorney who regularly practices in the courts of this state and may be a member of the district attorneys general conference or a member of the district public defenders conference, and one (1) of whom shall be neither a judge nor an attorney, to be appointed by the governor.

(b) The board shall select its own chairperson. The board also shall select a vice chair and shall select one (1) member to serve as a direct liaison to the members of the general assembly.

(c) Each member of the board shall serve for a term of three (3) years and shall be eligible for reappointment to one (1) additional term. Vacancies on

the court for an unexpired term shall be made for the remainder of the term by the appointing power of the original appointment.

(d)

(1) The chair shall divide the board into hearing panels of six (6) members and investigative panels of three (3) members. At least one (1) member of each investigative panel shall be a member other than a current judge and at least two (2) members of each hearing panel shall be members other than current judges. Membership on the panels may rotate in a manner determined by the chair; provided, that no members shall sit on both the hearing and investigative panels for the same proceeding.

(2) A hearing panel has the duty and authority to rule on prehearing motions, conduct hearings on formal charges and make findings, conclusions, and impose sanctions or dismiss the case.

(3) An investigative panel has the duty and authority to:

(A) Review the recommendations of disciplinary counsel after preliminary investigation and either authorize a full investigation or dismiss the complaint; and

(B) Review the recommendations of disciplinary counsel after a full investigation and approve, disapprove or modify the recommendations as provided in § 17-5-304.

(4) No attorney member of the board shall sit on any investigative or hearing panel if the attorney has ever appeared before the judge against whom the complaint is filed.

(e) The appointing authorities, in making their appointments, shall do so with a conscious intention of selecting a board that reflects a diverse mixture with respect to race, including the dominant ethnic minority population, and gender.

SECTION 2. Tennessee Code Annotated, Section 17-5-304, is amended by deleting subsections (a) and (b), substituting instead the following and redesigning existing subsections accordingly:

(a) Disciplinary counsel shall evaluate all information coming to the counsel's attention by complaint, upon the request of any member of the board or from any other credible source that alleges judicial misconduct or incapacity.

(b) The complaint shall allege specific facts directly relating to the alleged misconduct or incapacity of the judge in question. All complaints shall be reviewed by the disciplinary counsel and if, in the judgment of disciplinary counsel, the complaint establishes probable cause that the conduct complained of occurred and violates § 17-5-302, counsel shall, subject to review by the investigative panel pursuant to subdivision (c)(3), conduct a preliminary investigation. If the disciplinary counsel believes the complaint fails to establish probable cause that either the conduct occurred or the conduct constituted a violation of § 17-5-302, counsel shall, subject to review by the investigative panel pursuant to subdivision (c)(3), recommend dismissal of the complaint, or if appropriate, refer the matter to another agency.

(c)

(1) Disciplinary counsel may conduct interviews and examine evidence to determine whether the specific facts alleged are true and, if so, whether the facts establish probable cause that a violation of § 17-5-302 has occurred; provided, that no subpoena shall issue to obtain testimony or evidence until the investigative panel authorizes a full investigation pursuant to subdivision (c)(3).

(2) If disciplinary counsel believes there is evidence supporting the allegations against a judge, the counsel shall recommend to the investigative panel assigned to the case that the panel authorize a full investigation. Disciplinary counsel may also recommend a full investigation when it believes that there is evidence that would establish probable cause that a violation of §

17-5-302 has occurred and such evidence could be obtained by subpoena or further investigation. In all other cases, the disciplinary counsel must recommend that the matter be dismissed.

(3) The investigative panel shall review the disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation. Disciplinary counsel shall not have the authority to dismiss a complaint without the review of and approval by the investigative panel.

SECTION 3. Tennessee Code Annotated, Title 17, Chapter 5, Part 2, is amended by adding the following new sections:

Section 17-5-207.

(a)

(1) By the twentieth day of each month, the board shall compile and transmit to the chief clerk of the house of representatives and chief clerk of the senate a report containing at least the following information for the previous month:

- (A) The number and category of complaints opened;
- (B) The number and category of complaints closed; and
- (C) The disposition of the complaints closed by category.

(2) The monthly report shall also contain a cumulative, year-to-date total for subdivision (A), (B) and (C).

(b) By the twentieth day of January, March, June and September of each year, the board shall compile and transmit to the chief clerk of the house of representatives and chief clerk of the senate a report containing at least the following information for the prior three (3) month period:

- (1) The number of complaints opened;
- (2) The number of complaints closed;
- (3) The disposition of complaints closed;
- (4) The number of complaints pending;

(5) The number of complaints for which probable cause has been found;

(6) The number of complaints for which formal charges have been filed based on a recommendation by an investigative panel, including the nature of the charge, the names of the complainant(s), and the judge against whom the complaint is filed;

(7) The nature of any complaint filed according to the following categories:

- (A) Failure to comply with law;
- (B) Bias, prejudice, unfairness;
- (C) Discourtesy;
- (D) Abuse of office;
- (E) Delay;
- (F) *Ex parte* communication;
- (G) Disability;
- (H) Political Violation;
- (I) Recusal; and
- (J) Miscellaneous.

(8) The type of judge against whom a complaint is filed by category.

(c) The quarterly reports shall also contain a cumulative, year-to-date total of the information compiled in subsection (b).

(d) The September report shall also contain a five (5) year statistical comparison of the prior five (5) fiscal years for the same categories.

(e) The board shall adopt by rule a formal records retention policy and shall review such policy on an annual basis to determine if changes should be made.

Section 17-5-208.

(a) The chairperson of the board shall immediately provide the speaker of the senate and the speaker of the house of representatives with the name, type of judge, judicial district, if applicable, the reason for the reprimand and the number of previous reprimands each time any of the following events occur:

(1) A judge receives a second or subsequent public reprimand for conduct occurring during the entire period of time the person is a sitting judge;

(2) A judge receives a second or subsequent private reprimand for conduct within the same misconduct category set out in § 17-5-207(b)(7) occurring during any eight (8) year term the person holds the office of judge; or

(3) A judge receives a third or subsequent private reprimand for conduct within any of the misconduct categories set out in § 17-5-207(b)(7) occurring during any eight (8) year term the person holds the office of judge.

(b)

(1) The notice provided the speakers pursuant to subdivision (a)(1) shall be a public record.

(2) The notice provided the speakers pursuant to subdivision (a)(2) and (a)(3) shall remain confidential unless the general assembly opens an investigation of such judge pursuant to Article VI, Section 6 of or Article V of the Tennessee constitution.

SECTION 4. The Tennessee code commission is requested to replace the references in Title 17, Chapter 5 to the “court of the judiciary” with “board of judicial conduct,” to “court” with “board” and to make such other revisions reflecting changing the name of the “court of the judiciary” to the “board of judicial conduct” as are necessary, as sections are amended and volumes are replaced.

SECTION 5. In order to carry out its functions, duties, and responsibilities maintained under the provisions of this act, the court of the judiciary shall retain and have the authority to exercise any and all of its powers and duties existing under Title 17 prior to enactment of this act, including, but not limited to, the power to subpoena, the power to take evidence, and the power to examine. Upon the termination of the court of the judiciary, the board of judicial conduct is expressly granted the same powers and duties as set forth above for the court of the judiciary in order to carry out its responsibilities established by the provisions of this act. The board of judicial conduct also is expressly authorized to continue any preliminary investigations, full investigations, and/or trials scheduled or in progress by the court of the judiciary at the time of termination of the court of the judiciary. This authorization includes the right to use any evidence obtained or taken by the court of judiciary without the need to obtain again or retake any such evidence, including, but not limited to, prior issued subpoenas.

SECTION 6.

(a) All rules of the court of the judiciary in effect on the effective date of this section shall remain in full force and effect as rules of the board of judicial conduct until modified or repealed by the board of judicial conduct.

(b) The initial rules adopted by the board of judicial conduct shall serve as the temporary rules of the board. The temporary rules shall remain in effect until such time as approved or not approved by the general assembly, with the board's chairperson presenting the rules, during the first session of the one hundred eighth general assembly using the same procedure set out in § 16-3-404 for rules of court. If approved, the rules shall become the permanent rules of the board. All subsequent modifications or additions to such rules shall be approved by the general assembly in accordance with the procedures set forth in § 16-3-404.

SECTION 7. Tennessee Code Annotated, Section 4-29-235, is amended by adding a new subdivision as follows:

() Tennessee board of judicial conduct, created by § 17-5-201;

SECTION 8. For purposes of appointing the members of the board of judicial conduct created by this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on July 1, 2012, the public welfare requiring it.