

Amendment No. 2 to SB0001

**Kelsey
Signature of Sponsor**

AMEND Senate Bill No. 1*

House Bill No. 142

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

SECTION 1. Tennessee Code Annotated, Title 2, Chapter 5, Part 1, is amended by adding the following new section:

2-5-107.

This part shall not apply to a retention election in which a judge of the supreme court, the court of appeals, or the court of criminal appeals seeks election to fill the office to which the incumbent judge was appointed and confirmed. Title 17, chapter 4, part 1 shall govern such elections.

SECTION 2. Tennessee Code Annotated, Section 16-3-101(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) A judge must have been a resident of the grand division, from which the judge is appointed, for at least one (1) year immediately preceding appointment. For purposes of this subsection, "resident" shall have the same meaning as defined in title 2, chapter 2, part 1.

SECTION 3. Tennessee Code Annotated, Section 16-3-101(c), is amended by deleting the subsection in its entirety and substituting instead the following:

(c) Each judge shall be at least thirty-five (35) years of age at the time of appointment, shall have been a resident of the state for at least five (5) consecutive years immediately preceding appointment, and shall be licensed to practice law in this state. For purposes of this subsection, "resident" shall have the same meaning as defined in title 2, chapter 2, part 1.

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SECTION 4. Tennessee Code Annotated, Section 16-4-102, is amended by deleting the section in its entirety and substituting instead the following:

16-4-102.

(a) The court of appeals shall be composed of twelve (12) judges, of whom no more than four (4) shall be residents of the same grand division of the state. Immediately preceding appointment, each judge shall be at least thirty (30) years of age, shall have been a resident of the state for at least five (5) consecutive years, shall have been a resident of the grand division from which the judge is appointed for at least one (1) year, and shall be licensed to practice law in this state. For purposes of this subsection, "resident" shall have the same meaning as defined in title 2, chapter 2, part 1.

(b) The oaths of office of the judges of the court of appeals shall be filed and entered on the minutes of the court in the particular grand division from which the judge has been appointed and confirmed or subsequently elected. The oath shall likewise be filed and entered on the records in the office of the secretary of state at Nashville.

SECTION 5. Tennessee Code Annotated, Section 16-5-102, is amended by deleting the second sentence and substituting instead the following:

Immediately preceding appointment, each judge shall be at least thirty (30) years of age, shall have been a resident of the state for at least five (5) consecutive years, shall have been a resident of the grand division from which the judge is appointed for at least one (1) year, and shall be licensed to practice law in this state. For purposes of this

subsection, "resident" shall have the same meaning as defined in title 2, chapter 2, part 1.

SECTION 6. Tennessee Code Annotated, Section 17-1-103, is amended by deleting the section in its entirety and substituting instead the following:

(a) The judges of the supreme court, the court of appeals, and the court of criminal appeals shall be elected by the qualified voters of the state in a statewide retention election conducted in accordance with chapter 4, part 1 of this title, and any appointments to fill a vacancy or a full eight-year term shall be made in accordance with chapter 4, part 1.

(b) The chancellors, circuit court judges, criminal court judges, and judges of any other state trial court of record shall be elected by the qualified voters of their respective judicial districts, as provided in the general election law set forth in title 2, and any appointments due to a vacancy in any of these offices shall be made in accordance with chapter 4, part 3.

SECTION 7. Tennessee Code Annotated, Section 17-1-301, is amended by deleting the section in its entirety and substituting instead the following:

If a vacancy occurs during the term of office of a judge of the supreme court, the court of appeals, or the court of criminal appeals, then the governor shall appoint a qualified person to fill the vacancy. The governor's appointee shall be confirmed and shall stand for election in a retention election in accordance with chapter 4, part 1 of this title.

SECTION 8. Tennessee Code Annotated, Section 17-1-302, is amended by deleting the section in its entirety.

SECTION 9. Tennessee Code Annotated, Section 17-4-101, is amended by deleting the section in its entirety and substituting instead the following:

17-4-101.

(a) The governor shall appoint a qualified person to the supreme court, the court of appeals, or the court of criminal appeals:

(1) For a full eight-year term whenever an incumbent judge of the supreme court, the court of appeals, or the court of criminal appeals fails to file with the state election commission a written declaration of candidacy or withdraws a declaration of candidacy within the deadlines established by § 17-4-106 or is not retained in a retention election held at the end of an eight-year term; or

(2) To fill a vacancy occurring as a result of death, resignation, retirement, failure to be retained at a retention election held any time other than the end of an eight-year term, or otherwise.

(b) The governor's appointee shall not take office until the appointee has been confirmed by the general assembly by vote or by default as provided in this part.

(c) Upon notice of an impending vacancy, the process of appointment and confirmation in accordance with this part may proceed; however, a confirmed appointee shall not take office until the vacancy actually occurs.

SECTION 10. Tennessee Code Annotated, Section 17-4-102, is amended by deleting the section in its entirety and substituting instead the following:

17-4-102.

(a) On the same day an appointment to the supreme court, the court of appeals, or the court of criminal appeals is made, the governor shall provide written notice of the appointment to the chief clerk of the senate and the chief clerk of the house of representatives and shall specify whether the appointment is for a full eight-year term or for the filling of a vacancy. The chief clerks shall each refer the governor's notice of appointment to the appropriate standing committee of their respective house as provided by rule.

(b) The chair of any standing committee of the general assembly to which a notice of appointment pursuant to § 17-4-102(a) is referred may request the Tennessee bureau of investigation, as authorized by § 38-6-106(g), or other appropriate agencies to perform appropriate financial and criminal background investigations and inquiries of an appointee.

(c) The chair of any standing committee of the general assembly to which a notice of appointment pursuant to § 17-4-102(a) is referred may, in accordance with the rules of the applicable house, conduct a hearing, vote to recommend confirmation or rejection of the appointee, and submit a written report of the action taken to the applicable clerk.

(d) Within the appropriate sixty-day period, established in accordance with § 17-4-103, the general assembly shall meet in joint session for the purpose of voting either to confirm or to reject the governor's appointee. The votes of each house shall be made and tabulated separately. The governor's appointee shall be confirmed if both houses vote to confirm the appointee by a majority of all the members to which each house is entitled and shall be rejected if both houses vote to reject the appointee by a majority of all the members to which each house is entitled. If a vote results in any other outcome, then no action is taken and both houses may vote again to confirm or reject, subject to § 17-4-103(b).

SECTION 11. Tennessee Code Annotated, Section 17-4-103, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-103.

(a)

(1) If the general assembly is in its annual legislative session when the appointment is made, then the vote, if any, on confirmation of the governor's

appointee shall occur within sixty (60) consecutive calendar days immediately following the appointment.

(2) If the general assembly is not in its annual legislative session when the appointment is made, then the vote, if any, on confirmation of the governor's appointee shall occur within sixty (60) consecutive calendar days, beginning on the convening date of the next annual legislative session following the appointment.

(b) If the general assembly fails to reject the governor's appointee within sixty (60) consecutive calendar days as required in subsection (a), then the appointee shall be deemed confirmed as of the following calendar day, regardless of whether the general assembly is then in session.

SECTION 12. Tennessee Code Annotated, Section 17-4-104, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-104.

(a) A supreme court, court of appeals, or court of criminal appeals judge confirmed in accordance with this part shall commence service in the office to which the judge was confirmed:

(1) Upon confirmation, if the judge is confirmed to fill a vacancy for an unexpired term;

(2) September 1, if the judge is confirmed to a full eight-year term prior to the September 1 on which the term begins; or

(3) Upon confirmation, if the judge is confirmed to a full eight-year term after the eight-year term has commenced on September 1. The eight-year term of a supreme court, court of appeals, or court of criminal appeals judge confirmed after September 1 shall end on the same date as a judge confirmed on or prior to September 1.

(b) If the governor's appointee is rejected by the general assembly or is withdrawn by the governor within sixty (60) calendar days of the applicable date set out in § 17-4-103(a), then the governor shall appoint another individual for a full term or to fill a vacancy as provided in this part. Any appointee who has been rejected by the general assembly is not eligible for reappointment to the same court, until the next regular August election occurring at least one (1) year after the appointment.

SECTION 13. Tennessee Code Annotated, Section 17-4-105, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-105.

(a) A judge, who has been appointed and confirmed for a full eight-year term on the supreme court, the court of appeals, or the court of criminal appeals and who takes office on September 1 at the beginning of the eight-year term or in accordance with § 17-4-104(a)(3), shall face a retention election at the next regular August election immediately preceding the end of the eight-year term, as provided in § 17-4-106.

(b) A judge, who has been appointed and confirmed to fill a vacancy for an unexpired term on the supreme court, the court of appeals, or the court of criminal appeals more than thirty (30) days prior to the next regular August election, shall stand for election in a retention election for the remainder of the term at the next regular August election following confirmation as provided in § 17-4-106.

(c) A judge, who has been appointed and confirmed to fill a vacancy for an unexpired term on the supreme court, the court of appeals, or the court of criminal appeals thirty (30) days or less prior to a regular August election, shall stand for election in a retention election at the next regular August election occurring more than thirty (30) days following the judge's confirmation as provided in § 17-4-106.

(d) All incumbent judges of the supreme court, the court of appeals, and the court of criminal appeals who intend to stand for election for another eight-year term shall stand for election in a retention election at the regular August election immediately preceding the end of the eight-year term, as provided in § 17-4-106.

(e) The judges appointed in 2014 to fill vacancies on the supreme court, the court of appeals, and the court of criminal appeals, whose names were not included on the regular August 2014 ballot, shall, upon filing a timely written declaration of candidacy pursuant to § 17-4-106, stand for election in a retention election in the regular August election in 2016.

SECTION 14. Tennessee Code Annotated, Section 17-4-106, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-106.

(a) An incumbent judge of the supreme court, the court of appeals, or the court of criminal appeals who seeks to be retained in the office, to which the incumbent judge was appointed and confirmed, must qualify by filing with the state election commission a written declaration of candidacy to be retained for a full term or an unexpired term. The declaration must be filed not later than twelve o'clock (12:00) noon prevailing time on the first Thursday in January before the regular August election. A judge appointed and confirmed after the first Thursday in January in the same year as the regular August election must file the declaration no later than the first Thursday occurring at least one (1) full week after the judge's confirmation. After timely filing the declaration, a candidate may withdraw by filing a notice of withdrawal with the state election commission not later than twelve o'clock (12:00) noon prevailing time on the seventh day after the deadline for filing the declaration of candidacy.

(b)

(1) If the declaration of candidacy is timely filed, then only the name of the candidate, without party designation, shall be submitted to the qualified voters of the state in the regular August election. Each county election commission of the state shall cause the following to be placed on the ballot:

Shall (Name of Candidate) be retained in office as a Judge of the (Name of Court) or be replaced?

Retain

OR

Replace

(2) If the declaration of candidacy is not timely filed, then the judge's name shall not be submitted to the qualified voters of the state.

(c)

(1) If a majority of those voting on the question vote to retain the candidate, then the candidate is duly elected to the office and shall be given a certificate of election.

(2) If a majority or one-half (1/2) of those voting on the question vote not to retain the candidate, then a vacancy exists in the office as of September 1 following the regular August election. The governor shall fill the vacancy subject to confirmation by the general assembly in accordance with this part.

(3) A candidate who has been defeated in any retention election held under this chapter shall not be eligible for reappointment to the seat for which the candidate was defeated until one (1) regular August election has occurred subsequent to the defeat.

(d) An incumbent judge on the supreme court, the court of appeals, or the court of criminal appeals who does not file a declaration of candidacy for election within the prescribed time, who withdraws as a candidate for election, or who is not retained in a

retention election, shall end the judge's service in office on August 31 of that year. The governor shall fill the office subject to confirmation by the general assembly in accordance with this part.

SECTION 15. Tennessee Code Annotated, Sections 17-4-107—17-4-120, are amended by deleting the sections in their entireties.

SECTION 16. Tennessee Code Annotated, Section 4-29-237(a), is amended by adding the following language as a new, appropriately designated subdivision:

Trial court vacancy commission, created by § 17-4-301;

SECTION 17. Tennessee Code Annotated, Title 17, Chapter 4, is further amended by adding the following new part 3:

17-4-301.

(a) There is established as a part of the judicial branch of the state a trial court vacancy commission, to be composed of eleven (11) members as follows:

(1) Five (5) members shall be appointed by the speaker of the senate. At least three (3) of these members shall be attorneys;

(2) Five (5) members shall be appointed by the speaker of the house of representatives. At least three (3) of these members shall be attorneys; and

(3) One (1) member shall be appointed by joint action of the speaker of the senate and the speaker of the house of representatives. This member shall be an attorney and shall serve as chair of the commission.

(b)

(1) In order to stagger the terms of the newly appointed commission members, initial appointments shall be made as follows:

(A) One (1) of the initial appointments by the speaker of the senate shall be made for terms of two (2) years each;

(B) One (1) of the initial appointments by the speaker of the house of representatives shall be made for terms of two (2) years each;

(C) The speakers' joint appointment shall be made for a term of two (2) years;

(D) Two (2) of the initial appointments by the speaker of the senate shall be made for terms of four (4) years each;

(E) Two (2) of the initial appointments by the speaker of the house of representatives shall be made for terms of four (4) years each;

(F) Two (2) of the initial appointments by the speaker of the senate shall be made for terms of six (6) years each; and

(G) Two (2) of the initial appointments by the speaker of the house of representatives shall be made for terms of six (6) years each.

(2) After the initial appointments, the terms for all appointments shall comply with §§ 17-4-305 and 17-4-306.

(c) The administrative office of the courts shall develop and post on its web site downloadable information about the trial court vacancy commission suitable for viewing by the general public.

17-4-302.

(a) Each member of the trial court vacancy commission shall be a citizen of the United States, shall be at least thirty (30) years of age, and shall have been a citizen of this state for at least five (5) years immediately prior to appointment.

(b) Each attorney member shall be duly licensed to practice by the Tennessee supreme court.

17-4-303.

(a) No member of the trial court vacancy commission shall be a salaried office holder of this state or the United States, nor shall any member of the commission hold

any office in any political party or political organization; provided, that members of the national guard and members of any armed forces reserve organization, any district attorney general or an employee of a district attorney general, or any district public defender or an employee of a district public defender shall not be considered as salaried office holders. This subsection (a) shall not apply to the solicitor general or any employee of the attorney general and reporter, any of whom shall be eligible to serve as a member of the trial court vacancy commission.

(b) Any member of the trial court vacancy commission who becomes a salaried office holder of this state or the United States or who accepts any office in any political party or political organization shall by doing so vacate the member's office as a member of the commission.

(c) No member of the trial court vacancy commission shall be a registered employer of a lobbyist in this state or a registered lobbyist in this state. Any member of the commission who becomes a registered employer of a lobbyist or a registered lobbyist in this state shall by doing so vacate the member's office as a member of the commission.

17-4-304.

(a) The term of office of each member of the trial court vacancy commission shall begin on May 1, 2015.

(b) The chair shall call an organizational meeting of the commission as soon as practicable on or after May 1, 2015.

(c) The commission may adopt and from time to time amend bylaws and rules of procedure for the conduct of the commission's business and discharge of the commission's duties.

(d) The commission may employ such secretarial and clerical assistance as it deems necessary.

17-4-305.

(a) Except as otherwise provided in § 17-4-301(b) or § 17-4-306, the term of a member of the trial court vacancy commission shall be six (6) years.

(b) Members shall be eligible for reappointment for a successive term.

17-4-306.

(a) A vacancy on the trial court vacancy commission shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(b) Any member of the trial court vacancy commission who misses four (4) meetings of the commission during the member's term of office shall by doing so vacate the member's office as a member of the commission.

17-4-307.

(a) Members of the trial court vacancy commission shall not receive any compensation for their services but shall be reimbursed for their official travel expenses pursuant to policies and guidelines promulgated by the supreme court.

(b) Subject to budgetary restrictions, the administrative office of the courts shall pay or reimburse the necessary expenses authorized or incurred by the trial court vacancy commission in the performance of the duties pursuant to policies and guidelines promulgated by the supreme court.

17-4-308.

(a) After May 1, 2015, when a vacancy occurs in the office of chancellor, circuit court judge, criminal court judge, or judge of any other state trial court of record by death, resignation, retirement, or otherwise, the governor shall fill the vacancy by appointing one (1) of the three (3) persons nominated by the trial court vacancy commission. The governor may require the commission to submit one (1) other panel of three (3) additional nominees. Within sixty (60) days following receipt of the additional

panel of nominees, the governor shall fill the vacancy by appointing any one (1) of the six (6) nominees certified by the commission.

(b) The term of a judge appointed under this section shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.

(c) The trial court vacancy commission shall, at the earliest practicable date, hold a public meeting in the judicial district from which the vacancy is to be filled.

(d) Notice of the time, place, and purpose of the meeting shall be given by newspapers, radio news, or television news and by such other means as the commission deems proper.

(e) Any person shall be entitled to attend the meeting and express orally or in writing the citizen's approval of or objections to any suggested nominee for the trial court vacancy. Any licensed attorney may appear and make a statement, oral or written, in support of the attorney's own nomination.

(f) After one (1) public hearing, the commission may hold such additional interviews with the candidates as it deems necessary. The commission shall make independent investigation and inquiry to determine the qualifications of possible nominees for the trial court vacancy and shall endeavor to encourage qualified attorneys to accept nomination and agree to serve if appointed to the trial court vacancy. All hearings, interviews, meetings, and deliberations of the commission shall be conducted publicly and shall comply with title 8, chapter 44, part 1. Deliberations among the commission members shall occur immediately after the conclusion of the interviews. The commission shall adjourn the public hearing and interviews and deliberate in executive session. The deliberations shall not be open to the public and shall not be required to comply with title 8, chapter 44, part 1. At the conclusion of deliberations among commission members, the commission shall reconvene the public hearing for

purposes of voting. When selecting nominees, commission members shall vote anonymously by written ballots, but such ballots shall be collected, announced, and tallied at the meeting by the presiding officer, and a majority of those present and voting shall decide questions. The Tennessee bureau of investigation Level II security clearance as to nominees shall be performed exclusively at the direction of the governor. After receiving the commission's panel or panels of nominees, but prior to making an appointment pursuant to subsection (a), the governor shall direct the Tennessee bureau of investigation or other appropriate agencies to perform appropriate financial and criminal background investigations and inquiries of the prospective appointees, and the governor shall review and assess the results of the background investigations and inquiries.

(g) Upon the request of the commission, the board of judicial conduct and the board of professional responsibility shall furnish the commission with all information, records, files, or other documents, whether in an electronic format or written form, that the board or commission maintains on a person who applies to be a candidate to fill a trial court vacancy. A person's application for the position of trial court judge shall be deemed a waiver of any confidentiality to which records and other documents maintained by the board or commission on an applicant is otherwise entitled.

(h) As soon as practicable, and no later than sixty (60) days from receipt of written notice from the governor that a vacancy has occurred, the commission, with the assent of a majority of all the members to which it is entitled under § 17-4-301(a), shall select three (3) persons whom the commission deems best qualified and available to fill the vacancy and shall certify the names of the three (3) persons to the governor as nominees for the trial court vacancy. However, if the commission is reliably informed that a vacancy is impending for any other reason, then the commission may meet, select

such persons, and certify the names of the nominees to the governor prior to actual receipt of written notice from the governor that a vacancy has occurred.

(i) If the judicial district is one (1) of the five (5) smallest judicial districts according to the 2010 federal census or any subsequent federal census, the trial court vacancy commission may submit two (2) names to the governor, although the governor may require the commission to submit one (1) other panel of two (2) additional nominees.

(j) At the next regular August election occurring more than thirty (30) days after the vacancy occurs, the qualified voters of the district shall elect a candidate to fill the remainder of the unexpired term or a complete term, as provided in the general election law in title 2; provided, however, the qualifying deadline for candidates to fill the vacancy shall be determined by the date of the vacancy as follows:

(1) If the vacancy occurs on or before the tenth day prior to the regular qualifying deadline, then the regular qualifying deadline shall apply;

(2) If the vacancy occurs after the tenth day before the qualifying deadline but on or before the thirty-eighth day prior to the next regular August election, then the qualifying deadline shall be twelve o' clock (12:00) noon, prevailing time, on the tenth day after the vacancy is created;

(3) If the vacancy occurs after the thirty-eighth day but on or before the thirty-first day prior to the next regular August election, then the qualifying deadline shall be twelve o' clock (12:00) noon, prevailing time, on the twenty-eighth day before the election; and

(4) Candidates qualifying under sections (2) and (3) must withdraw no later than twelve o' clock (12:00) noon, prevailing time, on the third day after the qualifying deadline; however, no candidate shall withdraw after twelve o' clock (12:00) noon on the twenty-eighth day before the election.

17-4-309.

All nominees of the trial court vacancy commission shall be attorneys who are duly licensed to practice law in this state and who are fully qualified under the constitution and statutes of this state to fill the office for which they are nominated.

17-4-310.

(a) If the trial court vacancy commission does not furnish a list of three (3) nominees to the governor within sixty (60) days after receipt of written notice from the governor that a vacancy has occurred, then the governor may fill the vacancy by appointing any person who is duly licensed to practice law in this state and who is fully qualified under the constitution and statutes of this state to fill the office.

(b) The term of a judge appointed under this section shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.

17-4-311.

The administrative office of the courts shall keep and maintain all records of the trial court vacancy commission as well as furnish the commission with any other secretarial or clerical services or assistance it may require. It is further the duty of the administrative office of the courts to notify all commission members of the date, time, and place of any commission meetings.

SECTION 18. Tennessee Code Annotated, Section 17-4-201, is amended by deleting the section in its entirety.

SECTION 19. Tennessee Code Annotated, Section 38-6-106, is amended by adding the following new subsection (g):

(g) In addition to the authorization of the speaker of the senate and the speaker of the house of representatives to request the director of the Tennessee bureau of investigation to conduct a background investigation concerning persons under

consideration for appointment to a position of trust and responsibility, the chair of any standing committee to which the governor's notice of appointment has been referred pursuant to § 17-4-102 may request a background investigation of any gubernatorial appointee to the position of judge of the supreme court, court of appeals, or court of criminal appeals whose appointment will be considered by the committee as provided in § 17-4-102. Any report provided to the chair of the committee shall be treated as a confidential record that is not open to public inspection.

SECTION 20. If any provision of this act or the application thereof to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 21. Being deemed remedial legislation necessary to provide for a fair, orderly, and stable procedure for the appointment and confirmation of state judges, if conflict occurs between the provisions of this act and any other rule of law, statute, whether general or specific, or regulation, the provisions of this act shall control.

SECTION 22. This act shall take effect upon becoming a law, the public welfare requiring it.