

BILL ANALYSIS

Senate Research Center
81R34436 YDB-D

C.S.H.B. 764
By: Hartnett, Branch (Wentworth)
Administration
5/20/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Retired and former judges often are called upon to hold court to help dispose of accumulated business. The requirements for assignment of most judges are listed in the Court Administration Act (Chapter 74, Government Code). However, the assignment of a former or retired judge of a statutory probate court is not controlled by Chapter 74, but instead those requirements are listed in Section 25.0022 (Administration of Statutory Probate), Government Code.

In the 78th Legislature, Regular Session, 2003, H.B. 3306 was passed, which amended the requirements in Section 74.055 (List of Retired and Former Judges Subject to Assignment). It increased the length of service requirement for former or retired judges from 48 months to 96 months. H.B. 3306 also added a requirement that the judge certify under oath that he or she has never been publically reprimanded or censured by the State Commission on Judicial Conduct (SCJC) before the judge is eligible to be assigned. However, H.B. 3306 did not change the requirements for assignment of a former or retired probate judge.

This bill updates Section 25.0022, Government Code, so that the same requirements for assignment are applicable to all judges by requiring that retired and former probate judges have 96 months of active service, certify that they have never been publicly reprimanded or censured by SCJC, and demonstrate that they have completed the annual educational requirements.

C.S.H.B. 764 relates to eligibility for assignment as a visiting judge.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 25.0022(t), Government Code, as follows:

(t) Requires a former or retired judge of a statutory probate court, to be eligible for assignment under this section, to:

(1) not have been removed from office;

(2) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge has not been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the judge:

(i) did not resign or retire from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge as provided in Section 33.022 (Investigations and Formal Proceedings) and before the final disposition of that investigation; or

(ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation;

(3) annually demonstrate that the judge has completed in the past state fiscal year the educational requirements for an active statutory probate court judge;

(4) have served as an active judge for at least 96 months in the district, statutory probate, statutory county, or appellate court; and

(5) have developed substantial experience in the judge's area of specialty. Deletes existing text relating to a judge who did not resign from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before the final disposition of the proceedings.

SECTION 2. (a) Makes application of the change in law made by this Act by amending Section 25.0022(t)(2), Government Code, and by adding Section 25.0022(t)(4) and (5), Government Code, prospective.

(b) Provides that the change in law made by this Act by amending Section 25.0022(t)(2), Government Code, and by adding Sections 25.0022(t)(4) and (5), Government Code, does not apply to a person who immediately before the effective date of this Act meets the eligibility requirements to be assigned by the presiding judge under Section 25.0022(h) (relating to circumstances under which a judge or former or retired judge of a statutory probate court is authorized to be assigned to hold court in a statutory probate court, county court, or any statutory court exercising probate jurisdiction), Government Code, and the former law is continued in effect for determining that person's eligibility for that purpose.

SECTION 3. Effective date: September 1, 2009.