

HOUSE BILL 1257

By Curcio

AN ACT to amend Tennessee Code Annotated, Title 2; Title 4; Title 8; Title 16; Title 17 and Title 38, Chapter 6, relative to the appointment of judicial officers.

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

SECTION 1. Tennessee Code Annotated, Section 17-2-303(a), is amended by deleting the subsection and substituting instead the following:

(a) The supreme court is authorized to appoint and renew senior judges, subject to confirmation by the general assembly pursuant to §§ 17-2-309 - 17-2-311, only after making an affirmative finding that the effective administration of justice in one (1) or more judicial districts requires additional judicial resources.

SECTION 2. Tennessee Code Annotated, Section 17-2-303(b)(1), is amended by deleting the language "If the supreme court, at its discretion, determines" and substituting instead the language "If the supreme court determines and the general assembly confirms".

SECTION 3. Tennessee Code Annotated, Title 17, Chapter 2, Part 3, is amended by deleting Section 17-2-309 and substituting instead the following new sections:

17-2-309.

(a) Immediately upon making an appointment or renewal of a senior judge, the supreme court shall provide written notice of the appointment to the chief clerk of the senate and the chief clerk of the house of representatives. Delivery of the notice of appointment to both the chief clerk of the senate and the chief clerk of the house of representatives begins the appropriate sixty-day period established in accordance with § 17-2-310. Upon receiving the notice of appointment, the chief clerk of the senate and the chief clerk of the house of representatives shall notify the members of their

respective house and shall refer the notice of appointment to the appropriate standing committee of their respective house as provided by rule.

(b) The Tennessee bureau of investigation shall perform appropriate financial and criminal background investigations of the subject of an appointment or renewal and shall provide the results of the investigations and inquiries to the chair of any standing committee of the general assembly to which a notice of appointment or renewal pursuant to subsection (a) is referred.

(c) The chair of any standing committee of the general assembly to which a notice of appointment pursuant to subsection (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 § 17-2-310, the general assembly shall meet in joint session for the purpose of voting either to confirm or to reject the supreme court's appointee. The votes of each house must be made and tabulated separately. The supreme court's appointee is confirmed if both houses vote to confirm the appointee by a majority of all the members to which each house is entitled. The supreme court's appointee is rejected if both houses vote to reject the appointee by a majority of all the members to which each house is entitled or if one (1) house votes to reject the appointee by at least two-thirds (2/3) of all members to which the 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 § 17-2-310(b). No vote shall be taken pursuant to this subsection (d) except in joint session.

17-2-310.

(a)

(1) If the general assembly is in its annual legislative session when the appointment or renewal is made, then the committee vote, if any, on confirmation

of the supreme court's appointee must occur within sixty (60) consecutive calendar days immediately following the appointment or renewal.

(2) If the general assembly is not in its annual legislative session when the appointment or renewal is made, then the committee vote, if any, on confirmation of the supreme court's appointee must 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 supreme court's appointee within sixty (60) consecutive calendar days as described in subsection (a), then the appointee is deemed confirmed as of the following calendar day, regardless of whether the general assembly is then in session.

17-2-311.

(a) A senior judge confirmed in accordance with this part shall commence service upon confirmation.

(b) If the supreme court's appointee is rejected by the general assembly or is withdrawn by the supreme court within sixty (60) calendar days of the applicable date set out in § 17-2-310, then the supreme court shall appoint another individual as provided in this part. Any appointee who has been rejected by the general assembly is not eligible for reappointment as a senior judge, until after the next regular August election occurring at least one (1) year following the appointment.

SECTION 4. Tennessee Code Annotated, Section 17-2-303(d), is amended by deleting the language "The supreme court's decision" and substituting instead the language "Except as provided in §§ 17-2-309 - 17-2-311, the supreme court's decision".

SECTION 5. Tennessee Code Annotated, Section 17-4-308(a), is amended by redesignating the subsection as subdivision (a)(1) and adding the following subdivision (a)(2):

(2) 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.

SECTION 6. Tennessee Code Annotated, Section 17-4-308(h), is amended by adding the following language to the end of the subsection:

The process of appointment and confirmation in accordance with this part may also proceed; however, a confirmed appointee shall not take office until the vacancy actually occurs.

SECTION 7. Tennessee Code Annotated, Section 17-4-310(a), is amended by redesignating the subsection as subdivision (a)(1) and adding the following subdivision:

(2) 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.

SECTION 8. Tennessee Code Annotated, Title 17, Chapter 4, Part 3, is amended by adding the following new sections:

17-4-312.

(a) Immediately upon making an appointment to the office of chancellor, circuit court judge, criminal court judge, or judge of any other state trial court of record, 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. Delivery of the notice of appointment to both the chief clerk of the senate and the chief clerk of the house of representatives begins the appropriate sixty-day period established in accordance with § 17-4-313. Upon receiving the notice of appointment, the chief clerk of the senate and the chief clerk of the house of representatives shall notify the members of their respective house and shall refer the notice of appointment to the appropriate standing committee of their respective house as provided by rule.

(b) The Tennessee bureau of investigation shall perform appropriate financial and criminal background investigations of a judicial appointee and shall provide the results of the investigations and inquiries to the chair of any standing committee of the general assembly to which a notice of appointment pursuant to subsection (a) is referred.

(c) The chair of any standing committee of the general assembly to which a notice of appointment pursuant to subsection (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 § 17-4-313, 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 must be made and tabulated separately. The governor's appointee is confirmed if both houses vote to confirm the appointee by a majority of all the members to which each house is entitled. The governor's appointee is rejected if both houses vote to reject the appointee by a majority of all the members to which each house is entitled or if one (1) house votes to reject the appointee by at least two-thirds (2/3) of all members to which the 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 § 17-4-313(b). No vote shall be taken pursuant to this subsection (d) except in joint session.

17-4-313.

(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 must 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 must 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 described in subsection (a), then the appointee is deemed confirmed as of the following calendar day, regardless of whether the general assembly is then in session.

17-4-314.

(a) A chancellor, circuit court judge, criminal court judge, or judge of any other state trial court of record confirmed in accordance with this part shall commence service in the office to which the judge was confirmed upon confirmation.

(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 § 17-4-313(a), then the governor shall appoint another individual 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 after the next regular August election occurring at least one (1) year following the appointment.

SECTION 9. Tennessee Code Annotated, Section 38-6-106, is amended by deleting subsection (g) and substituting instead the following:

(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 a notice of appointment by the governor or the supreme court has been referred pursuant to § 8-7-113, § 8-14-113, § 17-2-309, § 17-4-102, or § 17-4-312 must be provided with a background investigation of any gubernatorial appointee to the position of judge of the supreme court, court of appeals, or court of criminal appeals, chancellor, circuit court judge, criminal court judge, judge of any other state trial court of record, senior judge, district attorney general, or district public defender whose appointment will be considered by the committee as provided in § 8-7-113, § 8-14-113, § 17-2-309, § 17-4-102, or § 17-4-312. Any report provided to the chair of the committee is to be treated as a confidential record that is not open to public inspection.

SECTION 10. Tennessee Code Annotated, Section 8-7-107, is amended by deleting the last sentence of the section, redesignating the remaining language as subsection (a), and adding the following subsection (b):

(b) Prior to the election of a district attorney general pursuant to subsection (a), the governor shall appoint a suitable person to fill the office temporarily until the election takes place. The governor's appointee shall not take office until the appointee has been confirmed by the general assembly by vote or default as provided in this part.

SECTION 11. Tennessee Code Annotated, Title 8, Chapter 7, Part 1, is amended by adding the following new sections:

8-7-113.

(a) Immediately upon making an appointment to the office of district attorney general, 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. Delivery of the notice of

appointment to both the chief clerk of the senate and the chief clerk of the house of representatives begins the appropriate sixty-day period established in accordance with § 8-7-114. Upon receiving the notice of appointment, the chief clerk of the senate and the chief clerk of the house of representatives shall notify the members of their respective house and shall refer the notice of appointment to the appropriate standing committee of their respective house as provided by rule.

(b) The Tennessee bureau of investigation shall perform appropriate financial and criminal background investigations of an appointee to the office of district attorney general and shall provide the results of the investigations and inquiries to the chair of any standing committee of the general assembly to which a notice of appointment pursuant to subsection (a) is referred.

(c) The chair of any standing committee of the general assembly to which a notice of appointment pursuant to subsection (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 § 8-7-114, 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 must be made and tabulated separately. The governor's appointee is confirmed if both houses vote to confirm the appointee by a majority of all the members to which each house is entitled. The governor's appointee is rejected if both houses vote to reject the appointee by a majority of all the members to which each house is entitled or if one (1) house votes to reject the appointee by at least two-thirds (2/3) of all members to which the 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 § 8-7-114(b). No vote shall be taken pursuant to this subsection (d) except in joint session.

8-7-114.

(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 must 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 must 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 described in subsection (a), then the appointee is deemed confirmed as of the following calendar day, regardless of whether the general assembly is then in session.

8-7-115.

(a) A district attorney general confirmed in accordance with this part shall commence service upon confirmation.

(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 § 8-7-114, then the governor shall appoint another individual to fill a vacancy as provided in this part. Any appointee who has been rejected by the general assembly is

not eligible for reappointment as a district attorney general, until after the next regular August election occurring at least one (1) year following the appointment.

SECTION 12. Tennessee Code Annotated, Section 8-14-102(b)(1)(B), is amended by deleting the last sentence of the section and adding the following subdivision (b)(1)(C):

(C) Prior to the election of a district public defender pursuant to subdivision (b)(1)(B), the governor shall appoint a suitable person to fill the office temporarily until the election takes place. The governor's appointee shall not take office until the appointee has been confirmed by the general assembly by vote or default as provided in this part.

SECTION 13. Tennessee Code Annotated, Title 8, Chapter 14, Part 1, is amended by adding the following new sections:

8-14-113.

(a) Immediately upon making an appointment to the office of district public defender, 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. Delivery of the notice of appointment to both the chief clerk of the senate and the chief clerk of the house of representatives begins the appropriate sixty-day period established in accordance with § 8-14-114. Upon receiving the notice of appointment, the chief clerk of the senate and the chief clerk of the house of representatives shall notify the members of their respective house and shall refer the notice of appointment to the appropriate standing committee of their respective house as provided by rule.

(b) The Tennessee bureau of investigation shall perform appropriate financial and criminal background investigations of an appointee to the office of district public defender and shall provide the results of the investigations and inquiries to the chair of

any standing committee of the general assembly to which a notice of appointment pursuant to subsection (a) is referred.

(c) The chair of any standing committee of the general assembly to which a notice of appointment pursuant to subsection (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 § 8-14-114, 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 must be made and tabulated separately. The governor's appointee is confirmed if both houses vote to confirm the appointee by a majority of all the members to which each house is entitled. The governor's appointee is rejected if both houses vote to reject the appointee by a majority of all the members to which each house is entitled or if one (1) house votes to reject the appointee by at least two-thirds (2/3) of all members to which the 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 § 8-14-114(b). No vote shall be taken pursuant to this subsection (d) except in joint session.

8-14-114.

(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 must 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 must 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 described in subsection (a), then the appointee is deemed confirmed as of the following calendar day, regardless of whether the general assembly is then in session.

8-14-115.

(a) A district public defender confirmed in accordance with this part shall commence service upon confirmation.

(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 § 8-14-114, then the governor shall appoint another individual to fill a vacancy as provided in this part. Any appointee who has been rejected by the general assembly is not eligible for reappointment as a district public defender, until after the next regular August election occurring at least one (1) year following the appointment.

SECTION 14. This act shall take effect September 1, 2019, the public welfare requiring it, and shall apply to senior judges appointed or renewed and appointments to fill vacancies for chancellor, circuit court judge, criminal court judge, judge of any other state trial court of record, district attorney general, or district public defender on or after that date.