

BILL ANALYSIS

Senate Research Center
81R19448 YDB-D

H.B. 764
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Administration
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Engrossed

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.

H.B. 764 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.

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) Provides that the change in law made by Chapter 315 (H.B. 3306), Acts of the 78th Legislature, Regular Session, 2003, to Section 74.055(c)(1) (relating to eligibility and the length of time a retired or former judge served in a certain court), Government Code, does not apply to a person who was serving a term as an active judge described by Section 74.054(a)(1) (relating to certain active judges being subject to assignment), Government Code, on August 31, 2003, and on completion of that term, met the eligibility requirements, other than the requirement of Section 74.055(c)(6) (relating to a judge certifying a willingness not to appear and plead as an attorney in any court for a certain time period), to be named on a list of retired and former judges under Section 74.055(c) (relating to a retired or former judge's eligibility to be named on the list), Government Code, as that law existed on August 31, 2003.

(b) Provides that Section 74.055(c), Government Code, as it existed on August 31, 2003, is continued in effect for determining the eligibility of a person describes by Subsection (a) of this section to be named on the list of retired and former judges subject to assignment.

SECTION 3. (a) Makes application of the change in law made 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.

(c) Provides that the change in law made by this Act by adding Section 25.0022(t)(3), Government Code, applies only to an assignment of a visiting judge appointed under Chapter 25 (Statutory County Courts), Government Code, made on or after September 1, 2010. Makes application of Section 25.0022(t), Government Code, except as provided by Subsection (b) of this section, prospective.

(d) Makes application of Section 25.0022(t)(2)(A), Government Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2009.