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HOUSE BILL NO. 1301

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 28, 2018)

(Patron Prior to Substitute—Delegate Adams, L.R.)

A BILL to amend and reenact §§ 16.1-69.9, 16.1-69.9:1, 16.1-69.9:4, 17.1-303, 17.1-400, 17.1-501, 17.1-509, 17.1-512, and 63.2-1515 of the Code of Virginia, relating to judges; central registry records check; statement of economic interests.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.9, 16.1-69.9:1, 16.1-69.9:4, 17.1-303, 17.1-400, 17.1-501, 17.1-509, 17.1-512, and 63.2-1515 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.9. Judges in office continued; terms of judges; how elected or appointed.

Every judge or justice and every associate, assistant and substitute judge or justice of a court not of record in office January 1, 1973, shall continue in office as a judge or substitute judge of such court under its designation as a general district court or juvenile and domestic relations district court until the expiration of the term for which he was appointed or elected, or until a vacancy shall occur in his office or until a successor shall be appointed or elected, whichever is the latter.

Upon the expiration of such terms, or when a vacancy occurs, successors shall be elected only as authorized pursuant to §§ 16.1-69.10 and 16.1-69.14 and for the term and in the manner following:

(a), (a1) ~~[Repealed.]~~

(b) 1. With respect to terms expiring on or after July 1, 1980, successors to judges shall be elected for a term of six years by the General Assembly as provided in (e) ~~hereof~~ *subdivision 2*.

Any vacancy in the office of any full-time district court judge shall be filled for a full term of six years in the manner prescribed herein; provided that such vacancy shall not be filled except as provided in § 16.1-69.9:3.

(e) 2. Full-time district court judges shall be elected by the majority of the members elected to each house of the General Assembly. No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search *and submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect and a report reports of such search searches has have been received by the chairmen of the House and Senate Committees for Courts of Justice. If the person has not met the requirement of filing in the preceding calendar year a disclosure form prescribed in § 2.2-3117 or 30-111, he shall also provide a written statement of economic interests on the disclosure form prescribed in § 2.2-3117 to the chairmen of the House and Senate Committees for Courts of Justice.* The judges of the circuit court having jurisdiction over the district may nominate a panel of no more than three persons for each judgeship within the district who are deemed qualified to hold the office. The General Assembly may consider such nominations in electing a judge to fill the office but may elect a person not on such panel to fill the office. Nominations shall be forwarded to the clerks of both houses of the General Assembly on or before December 15.

(d) 3. No person with a criminal conviction for a felony shall be appointed as a substitute judge.

If an appointment is to be made by two or more judges and there is a tie vote, then the senior judge of the circuit court having jurisdiction in the district shall make the appointment.

§ 16.1-69.9:1. Appointment, terms, etc., of substitute judges.

(a) A. Substitute judges shall be appointed by the chief judge of the circuit court having jurisdiction within the district for a term of six years.

(b) ~~[Repealed.]~~

(e) B. Each substitute judge shall be appointed to serve every general district court and every juvenile and domestic relations district court within the judicial district for which the appointment is made.

(d) C. No person shall be appointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search, *submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect, and provided a written statement of economic interests on the disclosure form prescribed in § 2.2-3117.* No person with a criminal conviction for a felony shall be appointed as a substitute judge.

§ 16.1-69.9:4. Same; election of successor judges.

Whenever a vacancy occurs or exists in the office of a full-time district judge while the General Assembly is in session, or whenever the term of a full-time judge of a district court will expire or the office will be vacated at a date certain between the adjournment of the General Assembly and the

commencement of the next session of the General Assembly, a successor judge may be elected at any time during a session preceding the date of such vacancy, by the vote of a majority of the members elected to each house of the General Assembly, for a full term of six years and, upon qualification, the successor judge shall enter at once upon the discharge of the duties of his office. However, such successor judge shall not enter upon the discharge of his duties prior to the commencement of his term of office. No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search *and submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect* and ~~a report~~ *reports* of such ~~search~~ *searches* ~~has~~ *have* been received by the chairmen of the House and Senate Committees for Courts of Justice. *If the person has not met the requirement of filing in the preceding calendar year a disclosure form prescribed in § 2.2-3117 or 30-111, he shall also provide a written statement of economic interests on the disclosure form prescribed in § 2.2-3117 to the chairmen of the House and Senate Committees for Courts of Justice.*

§ 17.1-303. Election of successor justice before date of vacancy.

Whenever a vacancy occurs or exists in the office of a justice of the Supreme Court while the General Assembly is in session, or whenever the term of office of a justice of the Supreme Court will expire or the office will be vacated at a date certain between the adjournment of the General Assembly and the commencement of the next session of the General Assembly, a successor may be elected at any time during a session preceding the date of such vacancy, by the vote of a majority of the members elected to each house of the General Assembly, for a full term and, upon qualification, the successor shall enter at once upon the discharge of the duties of the office; however, such successor shall not qualify prior to the predecessor leaving office. No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search *and submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect* and ~~a report~~ *reports* of such ~~search~~ *searches* ~~has~~ *have* been received by the chairmen of the House and Senate Committees for Courts of Justice. *If the person has not met the requirement of filing in the preceding calendar year a disclosure form prescribed in § 2.2-3117 or 30-111, he shall also provide a written statement of economic interests on the disclosure form prescribed in § 2.2-3117 to the chairmen of the House and Senate Committees for Courts of Justice.*

§ 17.1-400. Creation and organization; election and terms of judges; oath; vacancies; qualifications; incompatible activities prohibited; chief judge.

A. The Court of Appeals of Virginia is hereby established effective January 1, 1985. It shall consist of 11 judges who shall be elected for terms of eight years by the majority of the members elected to each house of the General Assembly. Before entering upon the duties of the office, a judge of the Court of Appeals shall take the oath of office required by law. The oath shall be taken before a justice of the Supreme Court of Virginia or before any officer authorized by law to administer an oath. When any vacancy exists while the General Assembly is not in session, the Governor may appoint a successor to serve until 30 days after the commencement of the next regular session of the General Assembly. Whenever a vacancy occurs or exists in the office of a judge of the Court of Appeals while the General Assembly is in session, or when the term of office of a judge of the Court of Appeals will expire or the office will be vacated at a date certain between the adjournment of the General Assembly and the commencement of the next session of the General Assembly, a successor may be elected at any time during a session preceding the date of such vacancy by the vote of a majority of the members elected to each house of the General Assembly for a full term and, upon qualification, the successor shall enter at once upon the discharge of the duties of the office; however, such successor shall not qualify prior to the predecessor leaving office. No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search *and submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect* and ~~a report~~ *reports* of such ~~search~~ *searches* ~~has~~ *have* been received by the chairmen of the House and Senate Committees for Courts of Justice. *If the person has not met the requirement of filing in the preceding calendar year a disclosure form prescribed in § 2.2-3117 or 30-111, he shall also provide a written statement of economic interests on the disclosure form prescribed in § 2.2-3117 to the chairmen of the House and Senate Committees for Courts of Justice.*

All judges of the Court of Appeals shall be residents of the Commonwealth and shall, at least five years prior to the appointment or election, have been licensed to practice law in the Commonwealth. No judge of the Court of Appeals, during his continuance in office, shall engage in the practice of law within or without the Commonwealth or seek or accept any nonjudicial elective office, or hold any other office of public trust, or engage in any other incompatible activity.

B. The chief judge shall be elected by majority vote of the judges of the Court of Appeals to serve a term of four years.

C. If a judge of the Court of Appeals is absent or unable through sickness, disability, or any other reason to perform or discharge any official duty or function authorized or required by law, a (i) retired

chief justice or retired justice of the Supreme Court of Virginia, (ii) retired chief judge or retired judge of the Court of Appeals of Virginia, or (iii) retired judge of a circuit court of Virginia, with his or her prior consent, may be appointed by the chief judge of the Court of Appeals, acting upon his own initiative or upon a personal request from the absent or disabled judge, to perform or discharge the official duties or functions of the absent or disabled judge until that judge shall again be able to attend his duties. The chief judge of the Court of Appeals shall be notified forthwith at the time any absent or disabled judge is able to return to his duties.

D. The chief judge of the Court of Appeals may, upon his own initiative, designate a (i) retired chief justice or retired justice of the Supreme Court of Virginia, (ii) retired chief judge or retired judge of the Court of Appeals of Virginia, or (iii) retired or active judge of a circuit court of Virginia, with the prior consent of such justice or judge, to perform or discharge the official duties or functions of a judge of the Court of Appeals if there is a need to do so due to congestion in the work of the court. Nothing in this subsection shall be construed to increase the number of judges of the Court of Appeals provided for in subsection A of this section.

E. Any retired chief justice, retired justice, retired chief judge or active or retired judge sitting on the Court of Appeals pursuant to subsection C or D shall receive from the state treasury actual expenses for the time he or she is actually engaged in holding court.

F. The powers and duties herein conferred or empowered upon the chief judge of the Court of Appeals may be exercised and performed by any judge or any committee of judges of the court designated by the chief judge for such purpose.

§ 17.1-501. Judges of circuit courts; selection, powers and duties of chief judges; exercise of appointive powers.

A. There shall be as many judges of the circuit courts as may be fixed by the General Assembly. The judges of each circuit shall select from their number by majority vote a chief judge of the circuit, who shall serve for the term of two years. In the event such judges cannot agree as to who shall be chief judge, the Chief Justice of the Supreme Court shall act as tie breaker.

B. The chief judge of the circuit shall ensure that the system of justice in his circuit operates smoothly and efficiently. He shall have authority to assign the work of the circuit among the judges, and in doing so he may consider the nature and categories of the cases to be assigned.

C. Unless otherwise provided by law, powers of appointment within a circuit shall be exercised by a majority of the judges of the circuit; however, the order of appointment may be signed by the chief judge or that judge's designee on behalf of the other judges. In case of a tie, the Chief Justice of the Supreme Court shall appoint a circuit judge from another circuit who shall act as tie breaker. Where the power of appointment is to be exercised by a majority of the judges of the Second Judicial Circuit and such appointment is to a local post, board or commission in Accomack or Northampton County, the resident judge or judges of the County of Accomack or Northampton shall exercise such appointment power as if he or they comprise the majority of the judges of the circuit.

D. No person shall be appointed or reappointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search, *submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect, and provided a written statement of economic interests on the disclosure form prescribed in § 2.2-3117.* No person with a criminal conviction for a felony shall be appointed as a judge.

§ 17.1-509. Vacancies in office of judge.

Whenever a vacancy occurs in the office of judge, a successor, who shall be a resident of the same circuit, shall be elected for a full term of eight years and upon qualification shall enter at once upon the discharge of the duties of his office. No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search *and submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect* and a ~~report~~ *reports* of such ~~search~~ *searches* ~~has~~ *have* been received by the chairmen of the House and Senate Committees for Courts of Justice. *If the person has not met the requirement of filing in the preceding calendar year a disclosure form prescribed in § 2.2-3117 or 30-111, he shall also provide a written statement of economic interests on the disclosure form prescribed in § 2.2-3117 to the chairmen of the House and Senate Committees for Courts of Justice.* Subject to the provisions of §§ 17.1-511 and 17.1-512, the Governor shall have the power while the General Assembly is not in session to fill pro tempore vacancies in such office. Such appointment to every vacancy shall be by commission to expire at the end of 30 days after the commencement of the next regular session of the General Assembly. No person with a criminal conviction for a felony shall be appointed as a judge.

§ 17.1-512. Election of successor judge before date of vacancy.

Whenever a vacancy occurs or exists in the office of a judge of a circuit while the General Assembly is in session, or whenever the term of office of a judge of a circuit court will expire or the office will

183 be vacated at a date certain between the adjournment of the General Assembly and the commencement
184 of the next session of the General Assembly, a successor judge may be elected at any time during a
185 session preceding the date of such vacancy, by the vote of a majority of the members elected to each
186 house of the General Assembly, for a term of eight years and upon qualification, the successor judge
187 shall enter at once upon the discharge of the duties of his office. However, such successor judge shall
188 not enter upon the discharge of his duties prior to the commencement of his term of office. No person
189 shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal
190 history record search *and submitted to a search of the central registry maintained pursuant to*
191 *§ 63.2-1515 for any founded complaint of child abuse or neglect and a report reports of such search*
192 *searches has have been received by the chairmen of the House and Senate Committees for Courts of*
193 *Justice. No person with a criminal conviction for a felony shall be appointed as a judge. If the person*
194 *has not met the requirement of filing in the preceding calendar year a disclosure form prescribed in*
195 *§ 2.2-3117 or 30-111, he shall also provide a written statement of economic interests on the disclosure*
196 *form prescribed in § 2.2-3117 to the chairmen of the House and Senate Committees for Courts of*
197 *Justice.*

198 **§ 63.2-1515. Central registry; disclosure of information.**

199 The central registry shall contain such information as shall be prescribed by Board regulation;
200 however, when the founded case of abuse or neglect does not name the parents or guardians of the child
201 as the abuser or neglecter, and the abuse or neglect occurred in a licensed or unlicensed child day
202 center, a licensed, registered or approved family day home, a private or public school, or a children's
203 residential facility, the child's name shall not be entered on the registry without consultation with and
204 permission of the parents or guardians. If a child's name currently appears on the registry without
205 consultation with and permission of the parents or guardians for a founded case of abuse and neglect
206 that does not name the parents or guardians of the child as the abuser or neglecter, such parents or
207 guardians may have the child's name removed by written request to the Department. The information
208 contained in the central registry shall not be open to inspection by the public. However, appropriate
209 disclosure may be made in accordance with Board regulations.

210 The Department shall respond to requests for a search of the central registry made by (i) local
211 departments, (ii) local school boards, and (iii) governing boards or administrators of private schools
212 accredited pursuant to § 22.1-19 regarding applicants for employment, pursuant to § 22.1-296.4, in cases
213 where there is no match within the central registry within 10 business days of receipt of such requests.
214 In cases where there is a match within the central registry regarding applicants for employment, the
215 Department shall respond to requests made by local departments, local school boards, and governing
216 boards or administrators within 30 business days of receipt of such requests. The response may be by
217 first-class mail or facsimile transmission.

218 *The Department shall disclose information in the central registry to the Chairmen of the Committees*
219 *for the Courts of Justice of the Senate and House of Delegates for the purpose of determining if any*
220 *person being considered for election to any judgeship has been the subject of any founded complaint of*
221 *child abuse or neglect.*

222 Any central registry check of a person who has applied to be a volunteer with a (a) Virginia affiliate
223 of Big Brothers/Big Sisters of America, (b) Virginia affiliate of Compeer, (c) Virginia affiliate of
224 Childhelp USA, (d) volunteer fire company or volunteer emergency medical services agency, or (e)
225 court-appointed special advocate program pursuant to § 9.1-153 shall be conducted at no charge.