

2014 -- H 8006

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE-- COURTS -- JUDICIAL SELECTION

Introduced By: Representative Anastasia P. Williams

Date Introduced: April 02, 2014

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 8-16.1-6 of the General Laws in Chapter 8-16.1 entitled "Judicial
2 Selection" is hereby amended to read as follows:

3 **8-16.1-6. Nomination and appointment of judges [Repealed effective June 30, 2014.]**

4 == (a) (1) The governor shall immediately notify the commission of any vacancy or prospective
5 vacancy of a judge of any state court other than the Rhode Island supreme court. The commission
6 shall advertise for each vacancy and solicit prospective candidates and shall consider names
7 submitted from any source. Within ninety (90) days of any vacancy the commission shall publicly
8 submit the names of not less than three (3) and not more than five (5) highly qualified persons for
9 each vacancy to the governor.

10 (2) Notwithstanding any other law to the contrary, any individual whose name was
11 publicly submitted to the governor by the commission as described in subsection (1) above, shall
12 also be eligible for subsequent nomination by the governor for any vacancy or prospective
13 vacancy of a judge in the same court for which that particular individual had previously applied
14 except for a vacancy in the position of presiding justice, chief justice, or chief judge.

15 (3) Such individuals shall remain eligible for nomination to fill any vacancy or
16 prospective vacancy within the same court to which they previously applied for a period of five
17 (5) years from the date their name or names were publicly submitted to the governor by the
18 commission unless such individuals withdraw from future consideration in writing to the judicial
19 nominating commission. However, such individuals must reapply for any subsequent vacancy or

1 prospective vacancy in the same court for the position of presiding justice, chief justice, or chief
2 judge.

3 (4) Subject to the eligibility requirements set forth above, the governor shall fill any
4 vacancy of any judge of the Rhode Island superior court, family court, district court, workers'
5 compensation court, or any other state court which the general assembly may from time to time
6 establish, by nominating one of the three (3) to five (5) highly qualified persons forwarded to him
7 or her by the commission for the court where the vacancy occurs, or by nominating another
8 individual who has previously applied for a vacancy or prospective vacancy within the same court
9 and whose name had been previously publicly submitted to the governor within the previous five
10 (5) years.

11 (b) The governor shall fill any vacancy within twenty-one (21) days of the public
12 submission by the commission.

13 (c) Each nomination shall be delivered forthwith to the secretary of the senate for
14 presentation to the senate, and by and with the advice and consent of the senate, each nominee
15 shall be appointed by the governor to serve subject to the general laws. The senate shall, after
16 seven (7) calendar days of receipt of the nomination consider the nomination, but if the senate
17 fails within ninety (90) days after the submission to confirm the nominee or if the senate does not
18 by a majority vote of its members extend the deliberation an additional seven (7) calendar days,
19 the governor shall appoint some other person to fill the vacancy and shall submit his or her
20 appointment to the senate for confirmation in like manner until the senate shall confirm the
21 nomination. If the nominee is rejected by the senate, the commission shall submit a new list of
22 three (3) to five (5) candidates to the governor for the purpose of nomination in accordance with
23 this chapter. Any new list may include but need not be limited to the names of any candidates
24 who were previously submitted to the governor by the commission but who were not forwarded
25 to the senate for its advice and consent.

26 (d) During the time for consideration of the nominees by the senate, the senate judiciary
27 committee shall conduct an investigation and public hearing on the question of the qualifications
28 of the nominee or nominees. At the public hearing, the testimony of every witness shall be taken
29 under oath and stenographic records shall be taken and maintained. Further, the senate judiciary
30 committee shall during the course of its investigation and hearing have the power upon majority
31 vote of the committee members present to issue witness subpoenas, subpoenas duces tecum, and
32 orders for the production of books, accounts, papers, records, and documents which shall be
33 signed and issued by the chairperson of the committee, or the person serving in his or her
34 capacity. All such subpoenas and orders shall be served as subpoenas in civil cases in the superior

1 court are served, and witnesses so subpoenaed shall be entitled to the same fees for attendance
2 and travel as provided for witnesses in civil cases in the superior court. If the person subpoenaed
3 to attend before the committee fails to obey the command of the subpoena without reasonable
4 cause, refuse to be sworn, or to be examined, or to answer a legal and pertinent question, or if any
5 person shall refuse to produce books, accounts, papers, records, and documents material to the
6 issue, set forth in an order duly served on him or her, the committee by majority vote of the
7 committee members present may apply to any justice of the superior court, for any county, upon
8 proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than
9 five (5) days, directing the person to show cause before the justice who made the order or any
10 other justice of the superior court, why he or she should not be adjudged in contempt. Upon the
11 return of the order, the justice before whom the matter is brought on for hearing shall examine
12 under oath the person, and the person shall be given an opportunity to be heard, and if the justice
13 shall determine that the person has refused without reasonable cause or legal excuse to be
14 examined or to answer a legal and pertinent question, or to produce books, accounts, papers,
15 records, and documents material to the issue which he or she was ordered to bring or produce, he
16 or she may forthwith commit the offender to the adult correctional institution, there to remain
17 until the person submits to do the act which he or she was so required to do, or is discharged
18 according to law.

19 (e) The committee shall, for the purpose of investigating the qualifications of the
20 nominee or nominees, be furnished with a report compiled by the state police in conjunction with
21 the attorney general's office indicating the determinations and findings of the state police and
22 attorney general's office investigations concerning the background of the nominee or nominees,
23 and the report shall include, but not be limited to, the following:

24 (1) Whether the nominee has ever been convicted of or pleaded guilty to a misdemeanor
25 or felony in this or any other state or foreign country;

26 (2) Whether the nominee has ever filed a personal bankruptcy petition or an assignment
27 for the benefit of creditors in this or any other state or foreign country; and whether the nominee
28 has ever been a partner in, held ten percent (10%) or more of stock in, or held office in any sole
29 proprietorship, partnership, or corporation that has been involved in bankruptcy or receivership
30 actions as a debtor or because of insolvency at the time the nominee was a partner in, held ten
31 percent (10%) or more stock in, or held office in any such sole proprietorship, partnership, or
32 corporation;

33 (3) Whether the nominee has ever had a civil judgment rendered against him or her
34 arising out of an allegation of fraud, misrepresentation, libel, slander, professional negligence, or

1 any intentional tort in this state or any other state or foreign country;

2 (4) The state police in conjunction with the attorney general's department shall provide
3 in their report the names and addresses of each and every source of their information.

4 (f) The reports set forth in this section shall be delivered to the chairperson and members
5 of the senate judiciary committee in addition to the nominee or nominees only prior to the
6 commencement of the public hearing. Provided, however, that if the nominee or nominees
7 withdraw or decline the appointment prior to the public hearing then the report or reports shall be
8 returned to the chairperson of the judiciary committee and destroyed.

9 (g) The committee shall also require a financial statement to be submitted by each
10 nominee, prior to the public hearing, to the chairperson of the senate judiciary committee, to
11 investigate each nominee to determine his or her compliance with the provisions of chapter 14 of
12 title 36.

13 (h) Any associate justice of any state court who is appointed to serve as the chief or
14 presiding justice of that court on an interim basis shall retain his or her status as an associate
15 justice until the appointment to chief or presiding justice is made permanent.

16 (i) In case a vacancy shall occur when the senate is not in session, the governor shall
17 appoint some person from a list of three (3) to five (5) persons submitted to the governor by the
18 commission to fill the vacancy until the senate shall next convene, when the governor shall make
19 an appointment as provided in this section.

20 ~~**8-16.1-6. Nomination and appointment of judges. [Effective June 30, 2014.]**~~

21 **Nomination and appointment of judges. [Effective June 30, 2015.]** -- (a) The governor shall
22 immediately notify the commission of any vacancy or prospective vacancy of a judge of any state
23 court other than the Rhode Island supreme court. The commission shall advertise for each
24 vacancy and solicit prospective candidates and shall consider names submitted from any source.
25 Within ninety (90) days of any vacancy the commission shall publicly submit the names of not
26 less than three (3) and not more than five (5) highly qualified persons for each vacancy to the
27 governor. The governor shall fill any vacancy of any judge of the Rhode Island superior court,
28 family court, district court, workers' compensation court, or any other state court which the
29 general assembly may from time to time establish, by nominating one of the three (3) to five (5)
30 highly qualified persons forwarded to him or her by the commission for the court where the
31 vacancy occurs.

32 (b) The governor shall fill any vacancy within twenty-one (21) days of the public
33 submission by the commission.

34 (c) Each nomination shall be forwarded forthwith to the senate, and by and with the

1 advice and consent of the senate, each nominee shall be appointed by the governor to serve
2 subject to the general laws. The senate shall, after seven (7) calendar days of receipt of the
3 nomination consider the nomination, but if the senate fails within ninety (90) days after the
4 submission to confirm the nominee or if the senate does not by a majority vote of its members
5 extend the deliberation an additional seven (7) calendar days, the governor shall appoint some
6 other person to fill the vacancy and shall submit his or her appointment to the senate for
7 confirmation in like manner until the senate shall confirm the nomination. If the nominee is
8 rejected by the senate, the commission shall submit a new list of three (3) to five (5) candidates to
9 the governor for the purpose of nomination in accordance with this chapter. Any new list may
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11 the governor by the commission but who were not forwarded to the senate for its advice and
12 consent.

13 (d) During the time for consideration of the nominees by the senate, the senate judiciary
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15 of the nominee or nominees. At the public hearing, the testimony of every witness shall be taken
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25 cause, refuse to be sworn, or to be examined, or to answer a legal and pertinent question, or if any
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27 issue, set forth in an order duly served on him or her, the committee by majority vote of the
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29 proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than
30 five (5) days, directing the person to show cause before the justice who made the order or any
31 other justice of the superior court, why he or she should not be adjudged in contempt. Upon the
32 return of the order, the justice before whom the matter is brought on for hearing shall examine
33 under oath the person, and the person shall be given an opportunity to be heard, and if the justice
34 shall determine that the person has refused without reasonable cause or legal excuse to be

1 examined or to answer a legal and pertinent question, or to produce books, accounts, papers,
2 records, and documents material to the issue which he or she was ordered to bring or produce, he
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12 or felony in this or any other state or foreign country;

13 (2) Whether the nominee has ever filed a personal bankruptcy petition or an assignment
14 for the benefit of creditors in this or any other state or foreign country; and whether the nominee
15 has ever been a partner in, held ten percent (10%) or more of stock in, or held office in any sole
16 proprietorship, partnership, or corporation that has been involved in bankruptcy or receivership
17 actions as a debtor or because of insolvency at the time the nominee was a partner in, held ten
18 percent (10%) or more stock in, or held office in any such sole proprietorship, partnership, or
19 corporation;

20 (3) Whether the nominee has ever had a civil judgment rendered against him or her
21 arising out of an allegation of fraud, misrepresentation, libel, slander, professional negligence, or
22 any intentional tort in this state or any other state or foreign country;

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4 appoint some person from a list of three (3) to five (5) persons submitted to the governor by the
5 commission to fill the vacancy until the senate shall next convene, when the governor shall make
6 an appointment as provided in this section.

7 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE-- COURTS -- JUDICIAL SELECTION

1 This act would make any individual, whose name was publically submitted to the
2 governor by the judicial nominating commission, eligible for subsequent nomination by the
3 governor until June 30, 2015, for any vacancy or prospective vacancy of a judge in the same court
4 for which that particular individual had previously applied except for a vacancy in the position of
5 presiding justice, chief justice, or chief judge.

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