

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 3669  
By: Naishtat (West)  
Jurisprudence  
5/15/2013  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.H.B. 3669 amends current law relating to the recusal or disqualification of a statutory probate judge or other judge authorized to hear probate, guardianship, or mental health matters, and the subsequent assignment of another 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 Sections 25.0022(d) and (h), Government Code, as follows:

(d) Requires the presiding judge to:

(1)-(8) Makes no change to these subdivisions; and

(9) assign or order the clerk who serves the statutory probate courts to randomly assign a judge or former or retired judge of a statutory probate court to hear a case under Section 25.002201(a) or 25.00255, as applicable, rather than under the circumstances described by Section 25.002201(b).

(h) Authorizes a judge or a former or retired judge of a statutory probate court, subject to Section 25.002201, to be assigned by the presiding judge of the statutory probate courts to hold court in a statutory probate court, a county court, or any statutory court exercising probate jurisdiction when:

(1)-(5) Makes no change to these subdivisions;

(6) the statutory probate judge is recused or disqualified as described by Section 25.002201(a), rather than the presiding judge of the administrative judicial district fails to timely assign a judge to replace a recused or disqualified statutory probate court judge as described by Section 25.002201(b); and

(7)-(8) Makes no change to these subdivisions.

SECTION 2. Amends Sections 25.002201(a) and (b), Government Code, as follows:

(a) Requires the presiding judge, rather than requires the judge of the administrative judicial district, except as provided by Subsection (b), not later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in a case, to assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case if:

(1)-(3) Makes no change to these subdivision; and

(4) the presiding judge, rather than the presiding judge of the administrative judicial district, receives notice and a request for assignment from the clerk of the statutory probate court under Section (25.00255(1)).

(b) Requires the chief justice of the supreme court, if the judge, who is the subject of an order of recusal or disqualification, is the presiding judge of the statutory probate courts, to assign a regional presiding judge, a statutory probate judge, or a former or retired judge of a statutory probate court to hear the case. Deletes existing text authorizing the presiding judge of the statutory probate courts, if the presiding judge of an administrative judicial district does not assign a judge under Subsection (a) within the time prescribed by that subsection, to assign a judge to hear the case instead of the presiding judge of the administrative judicial district making the assignment under that subsection.

SECTION 3. Amends Section 25.00255, Government Code, by amending Subsections (a), (g), (g-1), (i-2), (i-3), (i-5), and (l), as follows:

(a) Provides that, notwithstanding any conflicting provision in the Texas Rules of Civil Procedure, Rules 18a and 18b, Texas Rules of Civil Procedure, apply to the recusal and disqualification of a statutory probate court judge except as otherwise provided by this section or another provision of this subchapter. Provides that the presiding judge:

(1) has the authority and is required to perform the functions and duties of the presiding judge of the administrative judicial region under the rules, including the duty to hear or rule on a referred motion of recusal or disqualification or, subject to Subdivisions (2) and (3) and to Section 25.002201, assign a judge to hear and rule on a referred motion of recusal or disqualification;

(2) is authorized to assign a presiding judge of the administrative judicial region to hear and rule on a referred motion of recusal or disqualification only with the consent of the presiding judge of the administrative judicial region; and

(3) is prohibited from assigning a judge of a statutory probate court located in the same county as the statutory probate court served by the judge who is the subject of the motion of recusal or disqualification

Deletes existing text authorizing a party in a hearing or trial in a statutory probate court to file with the clerk of the court a motion stating grounds for the recusal or disqualification of the judge. Deletes existing text authorizing the grounds to include any disability of the judge to preside over the case.

(g) Provides that a judge who recuses himself or herself:

(1) is required to enter an order of recusal and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge, rather than the presiding judge of the administrative judicial district, assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (1), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order the clerk, rather than request that the clerk, who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts located in the county; and

(2) Makes no change to this subdivision.

(g-1) Provides that a judge who disqualifies himself or herself:

(1) is required to enter an order of disqualification and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge, rather than the presiding judge of the administrative judicial district, assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (1), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts; and

(2) Makes no change to this subdivision.

(i-2) Authorizes a judge who hears a motion for recusal or disqualification, rather than a motion for recusal or disqualification under Subsection (i) (relating to requiring the presiding judge of the statutory probate courts to immediately forward the request to the presiding judge of the administrative judicial district and request that the presiding judge of the administrative judicial district assign to a judge to hear the motion for recusal or disqualification) or (i-1) (relating to authorizing the presiding judge of the statutory probate courts to assign a judge to hear the motion and take other action under that subsection), to also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(i-3) Requires the presiding judge, if a motion for recusal or disqualification is granted, rather than if a motion for recusal or disqualification is granted after a hearing conducted as provided by Subsection (i) or (i-1), to transfer the case to another court or assign another judge to the case and:

(1) if the judge subject to recusal or disqualification serves a statutory probate court located in a county with only one statutory probate court, the presiding judge or judge assigned to decide the motion is required to enter an order of recusal or disqualification, as appropriate, and request that the presiding judge, rather than the presiding judge of the administrative judicial district, assign a judge under Section 25.002201 to hear the case; or

(2) subject to Subsection (1), if the judge subject to recusal or disqualification serves a statutory probate court located in a county with more than one statutory probate court, the presiding judge or judge assigned to decide the motion is required to enter an order of recusal or disqualification, as appropriate, and request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of one of the other statutory probate courts located in the county.

(i-5) Entitles a judge assigned to hear a motion for recusal or disqualification, rather than a motion for recusal or disqualification under Subsection (i), to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned under Section 25.0022. Deletes existing text entitling a judge assigned to hear a motion for recusal or disqualification, rather than a motion for recusal or disqualification under Subsection (i), to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned under Section 25.0022, except that a judge assigned under Subsection (i) is required to provide the information required by Section 25.0022(1) to the presiding judge of the administrative judicial district, who is required to immediately forward the information to the presiding judge of the statutory probate courts.

(l) Makes conforming changes.

SECTION 4. Amends Section 26.012, Government Code, to require a visiting judge, if the county judge is absent, incapacitated, recused, or disqualified to act in a probate, guardianship, or mental health matter, to be assigned in accordance with Section 25.0022(h).

SECTION 5. Repealers: Sections 25.00255(b) (relating to requiring a motion for the recusal or disqualification of a judge to meet certain requirements), (c) (relating to authorizing a motion for recusal or disqualification to be filed at the earliest practicable time before the beginning of the trial or other hearing if a judge is assigned to a case 10 or fewer days before the date set for a trial or hearing), (d) (relating to requiring a party filing a motion for recusal or disqualification to serve on all other parties or their counsel certain items), (e) (relating to authorizing a party to file with the clerk of the court a statement opposing or concurring with a motion for recusal or disqualification at any time before the motion is heard), (f) (relating to requiring the judge to recuse or disqualify himself or herself or request the assignment of a judge to hear the motion by forwarding the motion and opposing and concurring statements to the presiding judge of the statutory probate courts), (h) (relating to providing that a judge who does not recuse or disqualify himself or herself to perform certain actions), (i) (relating to requiring the presiding judge of the statutory probate courts to immediately forward the request to the presiding judge of the administrative judicial district to assign a judge to hear the motion for recusal or disqualification), (i-4) (relating to authorizing the presiding judge of an administrative judicial district to delegate the judge's authority to make orders of interim or ancillary relief under Subsection (i)(3) to the presiding judge of the statutory probate courts), and (j) (relating to authorizing a party to appeal an order that denies a motion for recusal or disqualification as an abuse of the court's discretion), Government Code.

Repealer: Section 25.002201(c) (relating to providing that the provisions of Section 25.0022 applicable to a judge assigned under that section apply to the same extent to a judge assigned under the authority of this section), Government Code.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2013.