



Ohio Legislative Service Commission

Resolution Analysis

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Am. H.J.R. 1

129th General Assembly

(As Reported by S. Judiciary – Civil Justice)

Reps. Huffman and Fende, Slaby, Grossman, Gardner, Sears, Maag, Derickson, McKenney, Amstutz, Brenner, Combs, Blessing, McClain, Thompson, Blair, Dovilla, Coley, Anielski, Baker, Beck, Boose, Carey, Duffey, Gonzales, Hollington, Martin, McGregor, Mecklenborg, Newbold, Rosenberger, Schuring, Stebelton, Uecker, Batchelder

Sens. Wagoner, Faber, Seitz, Turner

RESOLUTION SUMMARY

- Raises from 70 to 76 the age at which a person cannot assume judicial office pursuant to election or appointment.
- Sets the date of the election or appointment at which a judicial office is filled as the day as of which the age for assuming judicial office is measured.
- Prohibits a person from assuming judicial office pursuant to election or appointment if that person is 71 years of age or older during the person's term as a judge of the Supreme Court or a court of appeals and is that age on or prior to November 8, 2011.
- Repeals constitutional provisions that authorize the General Assembly to establish courts of conciliation and Supreme Court commissions.

CONTENT AND OPERATION

Age limit for election or appointment to judicial office

The Ohio Constitution currently provides that no person may be elected or appointed to any judicial office if on or before the day when the person is to assume the office and enter upon the discharge of its duties the person will be 70 years of age or older. Therefore the maximum age for assuming judicial office under existing law is 69 years of age. However, the Chief Justice or Acting Chief Justice may assign a retired

judge who is beyond the age limit to active duty, with compensation paid on a *per diem* basis.

The joint resolution raises to 76 the age at which a person cannot assume judicial office pursuant to election or appointment. It also changes the time at which that age is measured from "the day the person is to take office" to "the date of the election at which the office is to be filled." It also prohibits a person from being elected or appointed to any judicial office if that person is 71 years of age during the person's term of office as a judge of the Supreme Court or the court of appeals and is that age on or prior to November 8, 2011.¹

Repeal of constitutional provisions

The Ohio Constitution authorizes the General Assembly to establish courts of conciliation and prescribe their powers and duties, not including the power to render a final judgment in any case except upon agreement of the parties.² The Constitution also authorizes the General Assembly, at the request of the Supreme Court and with the concurrence of two-thirds of the members of each house, to appoint not more than once every ten years a commission to help the Supreme Court dispose of cases on its docket.³ The joint resolution repeals these provisions of the Constitution.

Section 19 is part of the Constitution as it was adopted in 1851 and was meant to help ease judicial backlogs by providing a means of resolving disputes without going through the normal judicial process. The General Assembly has created conciliation procedures for marital controversies⁴ and other forms of alternative dispute resolution for other types of cases (e.g., arbitration of contractual disputes and medical claims),⁵ but it has never established courts of conciliation.⁶

Section 22 was adopted in 1875 in an effort to clear up the continuing backlog of Supreme Court cases. The section required the Governor to appoint a temporary, five-member commission to hear cases transferred to the commission by the Supreme Court, and it empowered the General Assembly to create similar temporary commissions in

¹ Ohio Const., art. IV, § 6(C).

² Ohio Const., art. IV, § 19.

³ Ohio Const., art. IV, § 22.

⁴ R.C. 3117.01 to 3117.08.

⁵ R.C. 2711.01 to 2711.24.

⁶ Steven H. Steinglass and Gino J. Scarselli, *The Ohio State Constitution: A Reference Guide* (Westport, Conn.: Praeger, 2004), 193.

the future. The General Assembly has not established a commission under § 22 since 1883.⁷

Ballot date and effective date

The joint resolution provides for its appearance on the ballot for the general election scheduled for November 8, 2011.

The joint resolution provides that if it is approved by the voters, it will take effect immediately.

HISTORY

| ACTION | DATE |
|--|-------------|
| Introduced | 01-11-11 |
| Reported, H. Judiciary & Ethics | 02-16-11 |
| Adopted House (70-26) | 04-12-11 |
| Reported, S. Judiciary – Civil Justice | 06-23-11 |

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⁷ *Ibid.*, 193-94.

