

FIRST REGULAR SESSION

SENATE BILL NO. 440

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNEIDER.

Read 1st time February 11, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S1937.011

AN ACT

To repeal sections 211.023, 478.265, 478.266, 478.267 and 487.050, RSMo 1994, and sections 478.003, 478.268, 478.466, 487.020, 487.030, 487.040 and 487.170, RSMo Supp. 1998, relating to judicial commissioners in circuit courts, and to enact in lieu thereof thirteen new sections relating to the same subject, with an emergency clause and expiration dates for certain sections.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 211.023, 478.265, 478.266, 478.267 and 487.050, RSMo 1994, and sections 478.003, 478.268, 478.466, 487.020, 487.030, 487.040 and 487.170, RSMo Supp. 1998, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 211.023, 478.003, 478.037, 478.265, 478.266, 478.267, 478.268, 478.466, 487.020, 487.030, 487.040, 487.050 and 487.170, to read as follows:

211.023. **1.** In [each county of the first class having a charter form of government] **the eleventh, sixteenth, twenty-first and twenty-second judicial circuits**, except those [counties] **circuits** having a family court as provided in sections 487.010 to 487.190, RSMo, a majority of the circuit judges, en banc, may appoint one or two persons who shall have the same qualifications as a circuit judge to act as **juvenile court** commissioners.

2. The **juvenile court** commissioners shall be appointed for a term of four years. The compensation of a **juvenile court** commissioner shall be the same as set by law for associate circuit judges of the county for which they are appointed, payable by the state, and the commissioners shall devote full time to such duties.

3. Each juvenile court commissioner serving pursuant to this section on the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

effective date of this act may continue to serve in that position until the expiration of the commissioner's term, or, if sooner, the commissioner's death, resignation or removal from office. At such time, the vacated juvenile court commissioner position provided by this section shall be abolished, and there shall be an additional associate circuit judge position for each abolished juvenile court commissioner position as provided by section 478.037, RSMo. This section shall expire and be of no force and effect on and after August 1, 2003.

478.003. In any judicial circuit of this state, a majority of the judges of the circuit court may designate a judge to hear cases arising in the circuit subject to the provisions of sections 478.001 to 478.006. [In lieu thereof and subject to appropriations or other funds available for such purpose, a majority of the judges of the circuit court may appoint a person or persons to act as drug court commissioners. Each commissioner shall be appointed for a term of four years, but may be removed at any time by a majority of the judges of the circuit court. The qualifications and compensation of the commissioner shall be the same as that of an associate circuit judge. If the compensation of a commissioner appointed pursuant to this section is provided from other than state funds, the source of such fund shall pay to and reimburse the state for the actual costs of the salary and benefits of the commissioner. The commissioner shall have all the powers and duties of a circuit judge, except that any order, judgment or decree of the commissioner shall be confirmed or rejected by an associate circuit or circuit judge by order of record entered within the time the judge could set aside such order, judgment or decree had the same been made by the judge. If so confirmed, the order, judgment or decree shall have the same effect as if made by the judge on the date of its confirmation.]

478.037. 1. Upon the abolition of each commissioner or deputy commissioner position as provided by sections 211.023, 478.265, 478.266, 478.267, 478.268, 478.466 and 487.020, RSMo, there shall be an additional circuit or associate circuit judge position in the following judicial circuits or counties:

(1) There shall be an additional circuit judge position in each of the sixteenth, twenty-first and twenty-second judicial circuits upon the abolition of the position of probate commissioner in each of such circuits, provided that such circuit judges shall not be subject to section 485.040, RSMo, but shall preserve the record in their divisions in any manner allowed pursuant to section 478.072;

(2) There shall be an additional associate circuit judge position in Boone County upon the abolition of the position of family court commissioner in the thirteenth judicial circuit;

(3) There shall be additional associate circuit judge positions in each county wholly comprising one circuit, upon the abolition of each circuit court commissioner or deputy commissioner not otherwise specifically provided for in subdivisions (1) or (2) of this subsection.

2. There shall be an additional associate circuit judge position in any county wholly comprising one circuit, or in the largest county within a circuit comprised of more than one county, for each circuit receiving an appropriation for state fiscal year 2000 for a drug court commissioner to be appointed pursuant to section 478.003, as in effect prior to the effective date of this act.

3. The personal services and expense and equipment expenditures associated with the additional circuit or associate circuit judges provided by this section may be paid from funds appropriated for the commissioners and deputy commissioners that such judges replace.

4. The salaries and benefits of the additional judges provided by this section shall be paid by the state out of the state treasury, without necessity of reimbursement by any county or other source of funds.

478.265. **1.** The judge of the probate division of the **twenty-second judicial** circuit [court of any county which has more than four hundred thousand inhabitants] may appoint a person to be known as commissioner of the probate division of the circuit court, who shall possess the same qualifications and take and subscribe a like oath as such judge.

2. The compensation of the **probate** commissioner **in the twenty-second judicial circuit** shall be [limited, determined and paid in the same manner as division clerks as provided by subsection 2 of section 483.243, RSMo, until June 30, 1981, and section 483.245, RSMo, after that date except as provided in sections 478.266 and 478.267; provided, however, that said commissioner shall receive a per diem of twenty dollars per day as compensation unless said commissioner is a regular salaried employee serving the probate division of the circuit court in which event he shall receive no per diem allowance] **the same as that of a circuit judge payable in the same manner and from the same source as the compensation of the judge who serves in the probate division of the circuit court;** and his service shall extend until terminated by order of the judge of the probate division of the circuit court entered of record but not beyond the term of office of such judge **or the duration of the assignment of the appointing judge to the probate division.** Subject to approval or rejection by the judge of the probate division, the **probate** commissioner shall have all the powers and duties of such judge; but the judge shall by order of record reject or confirm all orders, judgments, and decrees of the commissioner within the time such judge could set aside such orders, judgments, or decrees, had the same been made by him; and if so confirmed such orders, judgments, and decrees shall have the same effect as if made by the judge on the date of such confirmation.

3. The probate commissioner serving in the twenty-second judicial circuit on the effective date of this act shall continue to serve in that position until the expiration of the commissioner's term, or, if sooner, the commissioner's death, resignation or removal from office. At such time, the position of probate commissioner in that circuit as provided by this section shall be abolished, and there shall be an additional circuit

judge position in that circuit as provided by section 478.037. This section shall expire and be of no force and effect on and after August 1, 2003.

478.266. 1. [Notwithstanding the provisions of section 478.265, on and after January 2, 1979, each county of the first class having a charter form of government and containing all or part of a city having a population of at least four hundred fifty thousand or more] **In the sixteenth judicial circuit**, a majority of the circuit judges, meeting en banc, may appoint one person, who shall possess the same qualifications as a circuit judge, to act as commissioner of the probate division of the circuit court.

2. The **probate commissioner in the sixteenth judicial circuit** shall be appointed for a term of four years. The compensation of the **probate** commissioner shall be the same as that of a circuit judge, payable in the same manner and from the same source as the compensation of the judge who serves in the probate division of the circuit court. Subject to approval or rejection by the judge of the probate division, the commissioner shall have all the powers and duties of the judge. The judge shall by order of record reject or confirm all orders, judgments and decrees of the commissioner within the time the judge could set aside such orders, judgments or decrees had the same been made by him. If so confirmed, the orders, judgments and decrees shall have the same effect as if made by the judge on the date of their confirmation.

3. The probate commissioner serving in the sixteenth judicial circuit on the effective date of this act shall continue to serve in that position until the expiration of the commissioner's term, or, if sooner, the commissioner's death, resignation or removal from office. At such time, the position of probate commissioner in that circuit as provided by this section shall be abolished, and there shall be an additional circuit judge position in that circuit as provided by section 478.037.

[2.] **4. In the sixteenth, twenty-first and twenty-second judicial circuits**, the judge of the probate division of the circuit court [of each county of the first class having a charter form of government and containing a population of at least four hundred fifty thousand inhabitants and in any city not within a county and, after January 1, 1991, in each county of the first class having a charter form of government and not containing all or part of a city having a population of at least four hundred fifty thousand or more] may appoint a person to be known as deputy commissioner of the probate division of the circuit court, who shall possess the same qualifications and take and subscribe a like oath as such judge.

5. The deputy [commissioner] **probate commissioners** shall be appointed for a term of four years. The compensation of the deputy **probate** commissioner shall be the same as that of an associate circuit judge of the circuit court in a county of the first class, payable in the same manner and from the same source as the compensation of an associate circuit judge of the circuit court of a first class county. Subject to approval or rejection by the judge of the probate division, the **deputy probate** commissioner shall have all the powers and duties of the clerk of the probate

division and such judge; but the judge shall by order of record reject or confirm all orders, judgments, and decrees of the deputy **probate** commissioner within the time such judge could set aside such orders, judgments, or decrees, had the same been made by him; and if so confirmed such orders, judgments, and decrees shall have the same effect as if made by the judge on the date of such confirmation.

6. The deputy probate commissioner serving in the sixteenth, twenty-first and twenty-second judicial circuit on the effective date of this act shall continue to serve in that position until the expiration of the commissioner's term, or, if sooner, the commissioner's death, resignation or removal from office. At such time, in each of said circuits, the vacated deputy probate commissioner position in that circuit as provided by this section shall be abolished, and there shall be an additional associate circuit judge position in each abolished deputy probate commissioner position as provided by section 478.037.

7. This section shall expire and be of no force and effect on and after August 1, 2003.

478.267. **1.** [Notwithstanding the provisions of section 478.265, on and after January 2, 1979, in each county of the first class having a charter form of government and having a population of at least nine hundred thousand or more inhabitants] **In the twenty-first judicial circuit**, the judge of the probate division of the circuit court may appoint one person, who shall possess the same qualifications as a circuit judge, to act as commissioner of the probate division of the circuit court.

2. The **probate** commissioner **in the twenty-first judicial circuit** shall be appointed for a term of four years. The compensation of the **probate** commissioner shall be [determined by the judge of the probate division of the circuit court, not to exceed] **the same amount as** the compensation of a circuit court judge, payable in the same manner and from the same source as the compensation of the judge who serves in the probate division of the circuit court. Subject to approval or rejection by the judge of the probate division, the commissioner shall have all the powers and duties of the judge. The judge shall by order of record reject or confirm all orders, judgments and decrees of the commissioner within the time the judge could set aside such orders, judgments or decrees had the same been made by him. If so confirmed, the orders, judgments and decrees shall have the same effect as if made by the judge on the date of their confirmation.

3. The probate commissioner serving in the twenty-first judicial circuit on the effective date of this act shall continue to serve in that position until the expiration of the commissioner's term, or, if sooner, the commissioner's death, resignation or removal from office. At such time, the position of probate commissioner in that circuit as provided by this section shall be abolished, and there shall be an additional circuit judge position in that circuit as provided by section 478.037. This section shall expire

and be of no force and effect on and after August 1, 2003.

478.268. 1. [Notwithstanding the provisions of section 478.265,] In the thirty-first judicial circuit, the circuit court en banc may appoint one person, who shall possess the same qualifications as a circuit judge, to act as commissioner of the probate division of the circuit court.

2. The **probate** commissioner **in the thirty-first judicial circuit** shall be appointed for a term of four years. The compensation of the **probate** commissioner shall be the same as that of an associate circuit judge, payable in the same manner and from the same source as the compensation of the associate circuit judge. Subject to approval or rejection by the judge of the probate division, the commissioner shall have all the powers and duties of the judge. The judge shall by order of record reject or confirm all orders, judgments and decrees of the commissioner within the time the judge could set aside such orders, judgments or decrees had the same been made by such judge. If so confirmed, the orders, judgments and decrees shall have the same effect as if made by the judge on the date of their confirmation.

3. **The probate commissioner serving in the thirty-first judicial circuit on the effective date of this act shall continue to serve in that position until the expiration of the commissioner's term, or, if sooner, the commissioner's death, resignation or removal from office. At such time, the position of probate commissioner in that circuit as provided by this section shall be abolished, and there shall be an additional associate circuit judge position in that circuit as provided by section 478.037. This section shall expire and be of no force and effect on and after August 1, 2003.**

478.466. 1. In the sixteenth judicial circuit [consisting of the county of Jackson], a majority of the court en banc may appoint one person, who shall possess the same qualifications as an associate circuit judge, to act as drug court commissioner.

2. The **drug court** commissioner shall be appointed for a term of four years. The compensation of the **drug court** commissioner shall be the same as that of an associate circuit judge and, subject to appropriation from the county legislature of the county wherein such circuit is wholly located, reimbursed from proceeds from the county antidrug sales tax adopted pursuant to section 67.547, RSMo. The county wherein such circuit is wholly located shall pay to and reimburse the state for the actual costs of the salary and benefits of the **drug court** commissioner appointed pursuant to this section **for each full calendar month that the drug court commissioner is employed in such position.** The retirement benefits of such commissioner shall be the same as those of an associate circuit judge, payable in the same manner and from the same source as those of an associate circuit judge. Subject to approval or rejection by a circuit judge, the commissioner shall have all the powers and duties of a circuit judge. A circuit judge shall by order of record reject or confirm any order, judgment and decree of the commissioner within the time the judge could set aside such order, judgment or decree had the same been made by him. If so confirmed, the order, judgment or decree shall have the same effect as if made by

the judge on the date of its confirmation.

3. The drug court commissioner serving in the sixteenth judicial circuit on the effective date of this act shall continue to serve in that position until the expiration of the commissioner's term, or, if sooner, the commissioner's death, resignation or removal from office. At such time, the position of drug court commissioner in that circuit as provided by this section shall be abolished, and there shall be an additional associate circuit judge position in that circuit as provided by section 478.037. Subsections 1 to 3 of this section shall expire and be of no force and effect on and after August 1, 2003.

[2.] **4.** The court administrator of the sixteenth judicial circuit shall charge and collect a surcharge of thirty dollars in all proceedings assigned to the drug [commissioner] **court in the sixteenth judicial circuit** for disposition, provided that the surcharge shall not be charged in any proceeding when costs are waived or are to be paid by the state, county or municipality. Moneys obtained from such surcharge shall be collected and disbursed in the manner provided by sections 488.010 to 488.020, RSMo, and payable to the drug [commissioner] **court** for operation of the drug court.

487.020. 1. In each circuit or a county having a family court, a majority of the circuit and associate circuit judges en banc, in the circuit, may appoint commissioners, subject to appropriations, to hear family court cases and make findings as provided for in sections 487.010 to 487.190. Any person serving as a commissioner of the juvenile division of the circuit court on August 28, 1993, shall become a commissioner of the family court. In each circuit or a county therein having a family court, a majority of the circuit and associate circuit judges en banc may appoint, in addition to those commissioners serving as commissioners of the juvenile division and becoming commissioners of the family court pursuant to the provisions of sections 487.020 to 487.040, no more than three additional commissioners to hear family court cases and make findings and recommendations as provided in sections 487.010 to 487.190. The number of additional commissioners added as a result of the provisions of sections 487.010 to 487.190 may be appointed only to the extent that the state is reimbursed for the salaries of the commissioners as provided in sections 487.010 to 487.190 [or] **for each full calendar month that the commissioner is employed in such position**, by federal or county funds or by gifts or grants made for such purposes.

2. A **family court** commissioner shall be appointed for a term of four years. Commissioners appointed pursuant to sections 487.020 to 487.040 shall serve in addition to circuit judges, associate circuit court judges and commissioners authorized to hear actions classified under section 487.080.

[2.] Each commissioner of the family court shall possess the same qualifications as a circuit judge. The compensation and retirement benefits of each commissioner shall be the same as that of an associate circuit judge, payable in the same manner and from the same source as that

of an associate circuit judge. **A commissioner shall act at all times in a manner befitting a member of the bench. A commissioner shall devote full time to the duties of commissioner and shall not engage in the private practice of law. A commissioner may be removed from office during a term by a majority of the circuit and associate circuit judges en banc upon proof at a hearing before such judges of crime, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency or any offense involving moral turpitude or oppression in office or unsatisfactory performance of duties.**

3. The qualifications contained in this section of any person appointed as family court commissioner shall be reviewable within the superintending control vested in the supreme court and the districts of the court of appeals by article V, section 4 of the Constitution of Missouri.

4. Each family court commissioner serving pursuant to this section on the effective date of this act may continue to serve in that position until the expiration of the commissioner's term, or, if sooner, the commissioner's death, resignation or removal from office. At such time, the vacated family court commissioner position provided by this section shall be abolished, and there shall be an additional associate circuit judge position for each abolished family court commissioner position as provided by section 478.037, RSMo. This section shall expire and be of no force and effect on and after August 1, 2003.

487.030. 1. The findings and recommendations of the commissioner shall become the judgment of the court when adopted and confirmed by an order of a circuit or an associate circuit judge. Notice of the findings and recommendations of the commissioner, together with a statement relative to the right to file a motion for rehearing, shall be given to the parties whose case has been heard by the commissioner, and to any other person that the court may direct. This notice may be given at the hearing, or by mail or other service directed by the court.

2. The parties to a cause of action heard by a commissioner are entitled to file with the court a motion for a hearing by a judge of the family court either within fifteen days after receiving notice of the findings of the commissioner at the hearing, or within fifteen days after the mailing, or within fifteen days after other service directed by the court. In cases in which the family court has jurisdiction pursuant to subdivision (1) of subsection 1 of section 211.031, RSMo, the juvenile officer, in addition to the parties listed above, is also entitled to file with the court a motion for a hearing by a judge of the family court within fifteen days after receiving notice of the findings of the commissioner. The judge shall promptly rule on such motion and, in his discretion, may either sustain or deny the motion, and if the motion is sustained, the judge shall set a date for a hearing. If the motion for rehearing is not ruled on within forty-five days after the motion is filed, it is denied for all purposes. In computing the forty-five days, no day shall be counted during which the court lacks power to act because of an order of a superior court.

3. This section shall expire and be of no force and effect on and after August 1, 2003.

487.040. 1. The administrative judge of the family court, or in circuits or counties which have a family court pursuant to subsection 2 of section 487.010 having one judge sitting as family court judge, the judge of the family court may direct that any case or class of cases may be heard by the commissioner in the manner provided for hearing of cases by law.

2. The circuit and associate circuit judges en banc may designate by order the location within the geographical jurisdiction of the court where the commissioners shall conduct hearings, provided, in circuits with split venue, one or more commissioners shall be assigned and shall conduct hearings in each venue with the exception of proceedings brought pursuant to the provisions of chapter 210, RSMo, or chapter 211, RSMo.

3. This section shall expire and be of no force and effect on and after August 1, 2003.

487.050. 1. To the extent feasible, judges designated as family court judges and the commissioners appointed under sections 487.020 to 487.040 **prior to the effective date of this act** shall be those who:

- (1) Desire to be so assigned;
- (2) Have the temperament necessary to deal properly with cases that come before the family court;
- (3) Have completed, or within six months after designation or appointment complete, a course of training in family law;
- (4) Attend annual continuing education courses to further training in family issues and law.

2. The qualifications contained in this section of any person designated as family court judge [or appointed commissioner shall be reviewable] **may be reviewed** within the superintending control vested in the supreme court and the districts of the court of appeals by article V, section 4 of the Constitution of Missouri.

3. [The commissioners shall act at all times in a manner befitting a member of the bench. The commissioner shall devote full time to the duties of commissioner and shall not engage in the private practice of law.

4. A commissioner may be removed from office during a term by a majority of the circuit and associate circuit judges en banc upon proof at a hearing before such judges of crime, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency or any offense involving moral turpitude or oppression in office or unsatisfactory performance of duties.

5.] Judges designated as family court judges shall serve in such capacity for a term of four years unless such judge's term is either extended at such family court judge's option or shortened

with the agreement of the family court judge and the presiding judge.

487.170. 1. A "Family Services and Justice Fund" is hereby established in each county or circuit with a family court, for the purpose of aiding with the operation of the family court divisions and services provided by those divisions. In circuits or counties having a family court, the circuit clerk shall charge and collect a surcharge of thirty dollars, in all proceedings falling within the jurisdiction of the family court. The surcharge shall not be charged when no court costs are otherwise required, shall not be charged for actions filed pursuant to the provisions of chapter 455, RSMo, shall not be charged to a government agency, and shall not be charged in any proceeding when costs are waived or are to be paid by the state, county or municipality.

2. In juvenile proceedings under chapter 211, RSMo, a judgment of up to thirty dollars may be assessed against the child, parent or custodian of the child, in addition to other amounts authorized by law, in informal adjustments made under the provisions of sections 211.081 and 211.083, RSMo, and in an order of disposition or treatment under the provisions of section 211.181, RSMo. The judgment may be ordered paid to the clerk of the circuit where the assessment is imposed and shall be collected and disbursed in the manner provided by [section 514.015] **sections 488.010 to 488.020**, RSMo.

3. All sums collected pursuant to this section and section 487.140 shall be payable to the various county family services and justice funds.

4. Any moneys in the family services and justice fund not expended for salaries of commissioners **appointed prior to the effective date of this act**, family court administrators, and family court staff shall be used toward funding the enhanced services provided as a result of the establishment of a family court; however, it shall not replace or reduce the current and ongoing responsibilities of the counties to provide funding for the courts as required by law. Moneys collected for the family services and justice fund shall be expended for the benefit of litigants and recipients of services in the family court, with priority given to services such as mediation, counseling, home studies, psychological evaluation and other forms of alternative dispute-resolution services. Expenditures shall be made at the discretion of the presiding judge or family court administrative judge, as designated by the circuit and associate circuit judges en banc, for the implementation of the family court system as set forth in this section. No moneys from the family services and justice fund may be used to pay for mediation in any cause of action in which domestic violence is alleged.

5. From the funds collected pursuant to this section and retained in the family services and justice fund, each circuit or county in which a family court commissioner in addition to those commissioners existing as juvenile court commissioners on August 28, 1993, [have been] **was** appointed **prior to the effective date of this act** pursuant to sections 487.020 to 487.040, shall pay to and reimburse the state for the actual costs of [that portion of] the [salaries] **salary of the** family court [commissioners] **commissioner** appointed pursuant to the provisions of sections

487.020 to 487.040 for each full calendar month that the commissioner is employed in such position. This subsection shall expire and be of no force and effect on and after August 1, 2003.

6. No moneys deposited in the family services and justice fund may be expended for capital improvements.

Section B. Because of the need to clarify the authority of judicial officers to enter judgments, orders and decrees, the authority of presiding judges of circuit courts to assign judicial personnel and the supreme court to superintend the judiciary, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

Unofficial

Bill

Copy