

HOUSE BILL 11

D1

CONSTITUTIONAL AMENDMENT
(PRE-FILED)

0lr0916

By: **Delegate Cardin**

Requested: October 15, 2019

Introduced and read first time: January 8, 2020

Assigned to: Judiciary and Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Judges – Election, Retention, and Mandatory Retirement Age**

3 FOR the purpose of proposing an amendment to the Maryland Constitution to provide for
4 retention elections for judges of the circuit courts; proposing an amendment to the
5 Maryland Constitution altering the mandatory retirement age for certain judges
6 under certain circumstances; proposing an amendment to the Maryland Constitution
7 to increase the number of years between successive retention elections for judges of
8 the Court of Appeals and Court of Special Appeals; proposing an addition to the
9 Maryland Constitution to provide for the application of certain amendments to the
10 Maryland Constitution; repealing certain obsolete provisions; making certain
11 technical corrections; making certain stylistic changes; and submitting this
12 amendment to the qualified voters of the State for their adoption or rejection.

13 BY proposing an amendment to the Maryland Constitution
14 Article IV – Judiciary Department
15 Section 3, 3A, 5A, and 41D

16 BY proposing an addition to the Maryland Constitution
17 Article IV – Judiciary Department
18 Section 5B and 18B

19 BY proposing a repeal of the Maryland Constitution
20 Article IV – Judiciary Department
21 Section 18B

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 (Three-fifths of all the members elected to each of the two Houses concurring), That it be
24 proposed that the Maryland Constitution read as follows:

25 **Article IV – Judiciary Department**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



3.

(A) Except for the [Judges] **JUDGES** of the District Court **AND THE CIRCUIT COURTS**, the [Judges] **JUDGES** of the several [Courts] **COURTS** other than the Court of Appeals or any intermediate courts of appeal shall, subject to the provisions of Section 5 of this Article of the Constitution, be elected in Baltimore City and in each county, by the qualified voters of the city and of each county, respectively, all of the said [Judges] **JUDGES** to be elected at the general election to be held on the Tuesday after the first Monday in November, as now provided for in the Constitution.

(B) Each of the said [Judges] **JUDGES** shall hold [his] **THE** office for the term of fifteen years from the time of [his] election, and until [his] **A** successor is elected and qualified, or until [he] **THE JUDGE** shall have attained the age of [seventy] **SEVENTY-THREE** years, whichever may first happen, and be reeligible thereto until [he] **THE JUDGE** shall have attained the age of [seventy] **SEVENTY-THREE** years, and not after.

(C) In case of the inability of any of said [Judges] **JUDGES** to discharge [his] **THE JUDGE'S** duties with efficiency, by reason of continued sickness, or of physical or mental infirmity, it shall be in the power of the General Assembly, two-thirds of the members of each House concurring, with the approval of the Governor to retire said [Judge] **JUDGE** from office.

3A.

(a) (1) Except as provided in paragraph (2) of this subsection, any former judge, except a former judge of the Orphans' Court, may be assigned by the Chief Judge of the Court of Appeals, upon approval of a majority of the court, to sit temporarily in any court of this State, except an Orphans' Court, as provided by law.

(2) (i) A retired judge of the Circuit Court for Montgomery County that sits as the Orphans' Court for Montgomery County may be assigned by the Chief Judge of the Court of Appeals, upon approval of a majority of the Court of Appeals, to do an act that a judge of the Orphans' Court for Montgomery County is authorized to perform.

(ii) A retired judge of the Circuit Court for Harford County that sits as the Orphans' Court for Harford County may be assigned by the Chief Judge of the Court of Appeals, upon approval of a majority of the Court of Appeals, to do an act that a judge of the Orphans' Court for Harford County is authorized to perform.

(b) The provisions of this section apply, notwithstanding provisions appearing elsewhere in this Article pertaining to retirement of judges upon attaining age [70] **73**.

5A.

(a) A vacancy in the office of a judge of an appellate court, whether occasioned by the death, resignation, removal, retirement, disqualification by reason of age, or rejection by the voters of an incumbent, the creation of the office of a judge, or otherwise, shall be filled as provided in this section.

(b) Upon the occurrence of a vacancy the Governor shall appoint, by and with the advice and consent of the Senate, a person duly qualified to fill said office who shall hold the same until the election for continuance in office as provided in subsections (c) and (d).

(c) The continuance in office of a judge of the Court of Appeals is subject to approval or rejection by the registered voters of the appellate judicial circuit from which [he] **THE JUDGE** was appointed at the next general election following the expiration of one year from the date of the occurrence of the vacancy [which he] **THAT THE JUDGE** was appointed to fill, and at the general election next occurring every [ten] **TWELVE** years thereafter.

(d) The continuance in office of a judge of the Court of Special Appeals is subject to approval or rejection by the registered voters of the geographical area prescribed by law at the next general election following the expiration of one year from the date of the occurrence of the vacancy [which he] **THAT THE JUDGE** was appointed to fill, and at the general election next occurring every [ten] **TWELVE** years thereafter.

(e) The approval or rejection by the registered voters of a judge as provided for in subsections (c) and (d) shall be a vote for the judge's retention in office for a term of [ten] **TWELVE** years or [his] **THE JUDGE'S** removal. The judge's name shall be on the appropriate ballot, without opposition, and the voters shall vote yes or no for [his] **THE JUDGE'S** retention in office. If the voters reject the retention in office of a judge, or if the vote is tied, the office becomes vacant ten days after certification of the election returns.

(f) An appellate court judge shall retire when [he] **THE JUDGE** attains [his seventieth] **THE JUDGE'S SEVENTY-THIRD** birthday.

(g) A member of the General Assembly who is otherwise qualified for appointment to judicial office is not disqualified by reason of [his] membership in a General Assembly which proposed or enacted any constitutional amendment or statute affecting the method of selection[, Continuance], **CONTINUANCE** in office, or retirement or removal of a judge, the creation or abolition of a court, an increase or decrease in the number of judges of any court, or an increase or decrease in the salary, pension or other allowances of any judge.

5B.

(A) THE JUDGES OF THE CIRCUIT COURTS SHALL, SUBJECT TO THE PROVISIONS OF SECTION 5 OF THIS ARTICLE OF THE CONSTITUTION, BE ELECTED IN BALTIMORE CITY AND IN EACH COUNTY, BY THE QUALIFIED VOTERS OF THE CITY

1 AND OF EACH COUNTY, RESPECTIVELY, ALL OF THE SAID JUDGES TO BE ELECTED AT
2 THE GENERAL ELECTION TO BE HELD ON THE TUESDAY AFTER THE FIRST MONDAY
3 IN NOVEMBER, AS NOW PROVIDED FOR IN THE CONSTITUTION.

4 (B) THE CONTINUANCE IN OFFICE OF A JUDGE OF A CIRCUIT COURT IS
5 SUBJECT TO APPROVAL OR REJECTION BY THE REGISTERED VOTERS OF THE CITY
6 AND OF EACH COUNTY PRESCRIBED BY LAW AT THE NEXT GENERAL ELECTION
7 FOLLOWING THE EXPIRATION OF ONE YEAR FROM THE DATE OF THE OCCURRENCE
8 OF THE VACANCY THAT THE JUDGE WAS APPOINTED TO FILL, AND AT THE GENERAL
9 ELECTION NEXT OCCURRING EVERY TWELVE YEARS THEREAFTER, OR UNTIL THE
10 JUDGE SHALL HAVE ATTAINED THE AGE OF SEVENTY-THREE YEARS, AND NOT
11 AFTER.

12 (C) IN CASE OF THE INABILITY OF ANY OF SAID JUDGES TO DISCHARGE THE
13 JUDGE'S DUTIES WITH EFFICIENCY, BY REASON OF CONTINUED SICKNESS, OR OF
14 PHYSICAL OR MENTAL INFIRMITY, IT SHALL BE IN THE POWER OF THE GENERAL
15 ASSEMBLY, TWO-THIRDS OF THE MEMBERS OF EACH HOUSE CONCURRING, WITH
16 THE APPROVAL OF THE GOVERNOR TO RETIRE SAID JUDGE FROM OFFICE.

17 [18B.

18 (a) For the purpose of implementing the amendments to this article, dealing with
19 the selection and tenure of appellate court judges, the following provisions shall govern.

20 (b) Each judge of an appellate court who is in office for an elected term on the
21 effective date of these amendments, unless he dies, resigns, retires, or is otherwise lawfully
22 removed, shall continue in office until the general election next after the end of his elected
23 term, or until his seventieth birthday, whichever first occurs. His continuance in office is
24 then subject to the provisions of section 5A(c) and (d) of this article, applicable to judges of
25 that court, but in no event shall any judge continue in office after his seventieth birthday.

26 (c) Each judge of a court specified in subsection (b) who is in office on the effective
27 date of these amendments, but who has not been elected to that office by the voters, shall,
28 within fifteen days after the effective date of these amendments, be reappointed to that
29 office. His continuance in office is then subject to the provisions of section 5A(c) and (d) of
30 this article, applicable to judges of that court, but in no event shall any judge continue in
31 office after his seventieth birthday.]

32 18B.

33 (A) THE AMENDMENTS TO §§ 3, 3A, 5A, AND 41D OF THIS ARTICLE
34 ALTERING THE MANDATORY RETIREMENT AGE OF JUDGES SHALL APPLY TO EACH
35 JUDGE WHO:

36 (1) IS FIRST ELECTED OR APPOINTED TO OFFICE ON OR AFTER THE

1 **DATE ON WHICH THE GOVERNOR ISSUES A PROCLAMATION UNDER ARTICLE XIV, §**
2 **1 OF THIS CONSTITUTION DECLARING THE AMENDMENTS TO BE ADOPTED; OR**

3 **(2) (I) IS IN OFFICE ON THE DATE ON WHICH THE GOVERNOR**
4 **ISSUES A PROCLAMATION UNDER ARTICLE XIV, § 1 OF THIS CONSTITUTION**
5 **DECLARING THE AMENDMENTS TO BE ADOPTED;**

6 **(II) WILL REACH THE AGE OF SEVENTY YEARS BEFORE THE**
7 **JUDGE COMPLETES THE END OF THE JUDGE'S TERM; AND**

8 **(III) APPLIES FOR, AND IS GRANTED, AN EXTENSION BY THE**
9 **GOVERNOR TO SERVE UNTIL THE JUDGE COMPLETES THE JUDGE'S TERM OR**
10 **ATTAINS THE AGE OF SEVENTY-THREE YEARS, WHICHEVER OCCURS FIRST.**

11 **(B) THE GOVERNOR MAY EXTEND A JUDGE'S TERM FOR THE PURPOSE OF**
12 **IMPLEMENTING SUBSECTION (A)(2) OF THIS SECTION.**

13 41D.

14 **(A) (1)** The Governor, by and with the advice and consent of the Senate, shall
15 appoint each judge of the District Court whenever for any reason a vacancy shall exist in
16 the office.

17 **(2)** All hearings, deliberations, and debate on the confirmation of
18 appointees of the Governor shall be public, and no hearings, deliberations or debate thereon
19 shall be conducted by the Senate or any committee or subcommittee thereof in secret or
20 executive session.

21 **(3)** Confirmation by the Senate shall be made upon a majority vote of all
22 members of the Senate.

23 **(4)** A judge appointed by the Governor may take office upon qualification
24 and before confirmation by the Senate, but shall cease to hold office at the close of the
25 regular annual session of the General Assembly next following [his] **THE JUDGE'S**
26 appointment or during which [he] **THE JUDGE** shall have been appointed by the Governor,
27 if the Senate shall not have confirmed [his] **THE JUDGE'S** appointment before then.

28 **(B) (1)** Each judge appointed by the Governor and confirmed by the Senate
29 shall hold the office for a term of ten years or until [he] **THE JUDGE** shall have attained
30 the age of [seventy] **SEVENTY-THREE** years, whichever may first occur.

31 **(2)** If the ten year term of a judge shall expire before that judge shall have
32 attained the age of [seventy] **SEVENTY-THREE** years, that judge shall be reappointed by
33 the Governor, with the Senate's consent, for another ten year term or until [he] **THE JUDGE**
34 shall have attained the age of [seventy] **SEVENTY-THREE** years, whichever may first

1 occur.

2 (C) To the extent inconsistent herewith, the provisions of Sections 3 and 5 of this
3 Article shall not apply to judges of the District Court.

4 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
5 determines that the amendment to the Maryland Constitution proposed by Section 1 of this
6 Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Maryland
7 Constitution concerning local approval of constitutional amendments do not apply.

8 SECTION 3. AND BE IT FURTHER ENACTED, That the amendment to the
9 Maryland Constitution proposed by Section 1 of this Act shall be submitted to the qualified
10 voters of the State at the next general election to be held in November 2020 for adoption or
11 rejection pursuant to Article XIV of the Maryland Constitution. At that general election,
12 the vote on the proposed amendment to the Constitution shall be by ballot, and on each
13 ballot there shall be printed the words “For the Constitutional Amendment” and “Against
14 the Constitutional Amendment”, as now provided by law. Immediately after the election,
15 all returns shall be made to the Governor of the vote for and against the proposed
16 amendment, as directed by Article XIV of the Maryland Constitution, and further
17 proceedings had in accordance with Article XIV.