

# HOUSE BILL 35

D1

CONSTITUTIONAL AMENDMENT  
(PRE-FILED)

11r0778

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By: **Delegate Cardin**

Requested: September 29, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary and Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Judges – Selection and Retention**

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 decreasing the term of office for the judges of the circuit  
6 courts; proposing an amendment to the Maryland Constitution to increase the  
7 number of years between successive retention elections for judges of the Court of  
8 Appeals and Court of Special Appeals; repealing certain obsolete provisions; making  
9 certain technical corrections; making certain stylistic changes; and submitting this  
10 amendment to the qualified voters of the State for their adoption or rejection.

11 BY proposing a repeal of the Maryland Constitution  
12 Article IV – Judiciary Department  
13 Section 3

14 BY proposing an amendment to the Maryland Constitution  
15 Article IV – Judiciary Department  
16 Section 5 and 5A

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

20 **Article IV – Judiciary Department**

21 [3.

22 Except for the Judges of the District Court, the Judges of the several Courts other  
23 than the Court of Appeals or any intermediate courts of appeal shall, subject to the

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 provisions of Section 5 of this Article of the Constitution, be elected in Baltimore City and  
2 in each county, by the qualified voters of the city and of each county, respectively, all of the  
3 said Judges to be elected at the general election to be held on the Tuesday after the first  
4 Monday in November, as now provided for in the Constitution. Each of the said Judges  
5 shall hold his office for the term of fifteen years from the time of his election, and until his  
6 successor is elected and qualified, or until he shall have attained the age of seventy years,  
7 whichever may first happen, and be reeligible thereto until he shall have attained the age  
8 of seventy years, and not after. In case of the inability of any of said Judges to discharge  
9 his duties with efficiency, by reason of continued sickness, or of physical or mental  
10 infirmity, it shall be in the power of the General Assembly, two-thirds of the members of  
11 each House concurring, with the approval of the Governor to retire said Judge from office.]

12 5.

13 **(A) (1) IN CASE OF THE INABILITY OF A JUDGE OF A CIRCUIT COURT TO**  
14 **DISCHARGE DUTIES WITH EFFICIENCY, BY REASON OF CONTINUED SICKNESS, OR OF**  
15 **PHYSICAL OR MENTAL INFIRMITY, IT SHALL BE IN THE POWER OF THE GENERAL**  
16 **ASSEMBLY, TWO-THIRDS OF THE MEMBERS OF EACH HOUSE CONCURRING, WITH**  
17 **THE APPROVAL OF THE GOVERNOR TO RETIRE SAID JUDGE FROM OFFICE.**

18 **(2) A VACANCY IN THE OFFICE OF A JUDGE OF A CIRCUIT COURT,**  
19 **WHETHER OCCASIONED BY THE DEATH, RESIGNATION, REMOVAL, RETIREMENT,**  
20 **DISQUALIFICATION BY REASON OF AGE, OR REJECTION BY THE VOTERS OF AN**  
21 **INCUMBENT, THE CREATION OF THE OFFICE OF A JUDGE, OR OTHERWISE, SHALL BE**  
22 **FILLED AS PROVIDED IN THIS SECTION.**

23 **(B) Upon [every] THE occurrence [or recurrence] of a vacancy [through death,**  
24 **resignation, removal, disqualification by reason of age or otherwise, or expiration of the**  
25 **term of fifteen years of any judge of a circuit court, or creation of the office of any such**  
26 **judge, or in any other way], the Governor shall appoint a person duly qualified to fill said**  
27 **office[,] who shall hold the same until the election [and qualification of his successor. His**  
28 **successor shall be elected at the first biennial general election for Representatives in**  
29 **Congress after the expiration of the term of fifteen years (if the vacancy occurred in that**  
30 **way) or the first such general election after one year after the occurrence of the vacancy in**  
31 **any other way than through expiration of such term. Except in case of reappointment of a**  
32 **judge upon expiration of his term of fifteen years, no person shall be appointed who will**  
33 **become disqualified by reason of age and thereby unable to continue to hold office until the**  
34 **prescribed time when his successor would have been elected] FOR CONTINUANCE IN**  
35 **OFFICE AS PROVIDED IN SUBSECTION (C) OF THIS SECTION.**

36 **(C) THE CONTINUANCE IN OFFICE OF A JUDGE OF A CIRCUIT COURT IS**  
37 **SUBJECT TO APPROVAL OR REJECTION BY THE REGISTERED VOTERS OF**  
38 **BALTIMORE CITY AND OF EACH COUNTY, RESPECTIVELY, PRESCRIBED BY LAW AT**  
39 **THE NEXT GENERAL ELECTION FOLLOWING THE EXPIRATION OF 1 YEAR FROM THE**  
40 **DATE OF THE OCCURRENCE OF THE VACANCY THAT THE JUDGE WAS APPOINTED TO**

1 **FILL, AND AT THE GENERAL ELECTION NEXT OCCURRING EVERY 12 YEARS**  
2 **THEREAFTER.**

3 **(D) THE APPROVAL OR REJECTION BY THE REGISTERED VOTERS OF A**  
4 **JUDGE AS PROVIDED FOR IN SUBSECTION (C) OF THIS SECTION SHALL BE A VOTE**  
5 **FOR THE JUDGE'S RETENTION IN OFFICE FOR A TERM OF 12 YEARS OR THE JUDGE'S**  
6 **REMOVAL. THE JUDGE'S NAME SHALL BE ON THE APPROPRIATE BALLOT, WITHOUT**  
7 **OPPOSITION, AND THE VOTERS SHALL VOTE YES OR NO FOR THE RETENTION IN**  
8 **OFFICE OF THE JUDGE. IF THE VOTERS REJECT THE RETENTION IN OFFICE OF A**  
9 **JUDGE, OR IF THE VOTE IS TIED, THE OFFICE BECOMES VACANT 10 DAYS AFTER**  
10 **CERTIFICATION OF THE ELECTION RETURNS.**

11 **(E) A JUDGE OF A CIRCUIT COURT SHALL RETIRE WHEN THE JUDGE**  
12 **ATTAINS THE AGE OF 70 YEARS.**

13 5A.

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

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

22 (c) The continuance in office of a judge of the Court of Appeals is subject to  
23 approval or rejection by the registered voters of the appellate judicial circuit from which  
24 **[he] THE JUDGE** was appointed at the next general election following the expiration of one  
25 year from the date of the occurrence of the vacancy **[which he] THAT THE JUDGE** was  
26 appointed to fill, and at the general election next occurring every **[ten] 12** years thereafter.

27 (d) The continuance in office of a judge of the Court of Special Appeals is subject  
28 to approval or rejection by the registered voters of the geographical area prescribed by law  
29 at the next general election following the expiration of one year from the date of the  
30 occurrence of the vacancy **[which he] THAT THE JUDGE** was appointed to fill, and at the  
31 general election next occurring every **[ten] 12** years thereafter.

32 (e) The approval or rejection by the registered voters of a judge as provided for in  
33 subsections (c) and (d) **OF THIS SECTION** shall be a vote for the judge's retention in office  
34 for a term of **[ten] 12** years or **[his] THE JUDGE'S** removal. The judge's name shall be on  
35 the appropriate ballot, without opposition, and the voters shall vote yes or no for **[his] THE**  
36 retention in office **OF THE JUDGE**. If the voters reject the retention in office of a judge, or  
37 if the vote is tied, the office becomes vacant ten days after certification of the election

1 returns.

2 (f) An appellate court judge shall retire when [he] **THE JUDGE** attains [his  
3 seventieth birthday] **THE AGE OF 70 YEARS**.

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

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

15 **SECTION 3. AND BE IT FURTHER ENACTED**, That the amendment to the  
16 Maryland Constitution proposed by Section 1 of this Act shall be submitted to the qualified  
17 voters of the State at the next general election to be held in November 2022 for adoption or  
18 rejection pursuant to Article XIV of the Maryland Constitution. At that general election,  
19 the vote on the proposed amendment to the Constitution shall be by ballot, and on each  
20 ballot there shall be printed the words “For the Constitutional Amendment” and “Against  
21 the Constitutional Amendment”, as now provided by law. Immediately after the election,  
22 all returns shall be made to the Governor of the vote for and against the proposed  
23 amendment, as directed by Article XIV of the Maryland Constitution, and further  
24 proceedings had in accordance with Article XIV.