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### SB 669 – Constitutional Amendment – Civil Jury Trials and SB 670 – Courts – Civil Jury Trials – Amount in Controversy

**Position: Unfavorable**

**March 31, 2021**

The Maryland Defense Counsel (MDC) is an organization of trial lawyers who represent a broad range of corporate, institutional, and individual defendants, including many of the state's health care providers and institutions. MDC opposes Senate Bill 669 and Senate Bill 670's proposed curtailment of the right to trial by jury which has been a staple of the Constitutional rights of the citizens of Maryland since the adoption of the Maryland Constitution. **At common law, there was no minimum amount for jury trials.**

In 2006, the voters of Maryland approved a referendum which amended the Maryland Constitution to provide that jury trials would not be available in civil cases with amounts in controversy of Ten Thousand Dollars (\$10,000.00) or less. The voters did so after the many testified before this Committee that a Ten Thousand Dollar (\$10,000.00) minimum amount for jury trials would create a reasonable balance between District and Circuit Courts in Maryland.

In 2008, bills were proposed which would inexplicably double the minimum amount for jury trials set by the voters just over a year before and establish a new minimum amount of Twenty Thousand Dollars (\$20,000.00). At the hearings on those bills, no judges appeared to suggest that increasing, much less doubling, the minimum amount for jury trials was either necessary or appropriate. The Maryland State Bar Association opposed the bills because they represented a "barrier to justice." Appropriately so because there was and is no reason to further diminish the right to trial by jury.

In 2010, the General Assembly increased the jury trial floor to Fifteen Thousand Dollars (\$15,000). Since inflation has remained low and we do not believe that it is appropriate to increase the floor.

The right to a trial by jury is not one to be considered lightly without substantial justification, especially in an economy in which Thirty Thousand Dollars (\$30,000.00) is significant for the average citizen. No data has been

provided to show that the Fifteen Thousand Dollar (\$15,000.00) minimum is flawed or that the balance established has been disturbed. No evidence has been produced that the right to a trial by jury has been abused or used inappropriately in a way that would be remedied by these bills. If the Committee believes there has been misuse of this right and that these bills would provide a remedy, a study should be commissioned to obtain data about the suspected misuse of that right (which data has not yet been compiled) before doubling the extent to which the right to trial by jury is taken away from civil litigants. No explanation has been provided as to why the legislature would make profound changes in the allocation of resources between district and circuit courts and rights available to civil litigants without consulting the Judiciary and/or submitting the issue for study.

If the supporters of Senate Bills 669 and 670 seek to readjust the minimum amount for a jury trial commensurate with 2010 dollars, at which time the Fifteen Thousand Dollar (\$15,000.00) minimum jury trial amount was last raised, the bills are still not justified. According to the Bureau of Labor Statistics, \$15,000 in 2010 dollars would be worth \$18,206.95 in 2021 dollars.<sup>1</sup>

The right to a trial by jury should never be taken away or limited in a discriminatory fashion. Yet that would be the precise impact of these bills. The net effect of the doubling of the minimum amount of jury trials in Maryland would be discriminatory, not associated with justice for all, but justice for some. Those advocating or benefiting from a doubling of the minimum amount of jury trials in Maryland tend to be those who have one or more of three characteristics (a) they pursue as their highest priority getting to trial as quickly and inexpensively as possible; (b) they are plaintiffs whose right to trial by jury will be unaffected by the increased minimum because they will receive a jury trial when they wish and avoid a jury trial when they wish because they subjectively establish the “amount on controversy” in the matter solely by virtue of the number they choose to place in the complaint’s prayer for relief; and/or (c) they are the party(ies) who already possess the information, witnesses or documents they need to prove their case and have no need for the circuit court’s discovery measures.

None of these attributes by themselves advance the objectives of the Constitution, promote the fair administration of justice or trump the rights of litigants who do not fall into these categories. We need a flexible system that allows quick and inexpensive trials when possible in District Court, but acknowledges that the discovery, dispute resolution and motions processes available in Circuit Court are often necessary to protect the rights of litigants and provide a fair, equitable and just course for the proceedings.

Indeed, the additional abridgement of the right to trial by jury in Maryland proposed in SB 669 and 670 further extinguishes the rights of parties in other categories, including without limitation (a) parties who require some time and some expense in order to obtain due process consisting of notice of the claims and the evidence against them and an opportunity to be heard; (b) defendants, who have no opportunity to establish (objectively or

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<sup>1</sup> <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=15%2C000&year1=201001&year2=202102>

subjectively) the “amount in controversy,” which is solely based upon the caprice of the plaintiff; (c) parties who do not have ready access to information, witnesses or documents that they need to prove their case and need more discovery than the 15 interrogatories available in District Court in order to present their case(s); and (d) parties who need a motions procedure to address substantive or procedural grievances before trial. There are very few permitted motions in District Court. If the grievances that could be addressed in motions in Circuit Court are not addressed by District Courts until the day of trial, the damage has already been done in most cases. Most often, on the day of trial, it is too late to save the time and resources that could have been saved or do the justice that could have been done through the motions process before trial. No reason has been advanced for further extinguishing the right to a trial by jury of these parties.

For the foregoing reasons, the Maryland Defense Counsel respectfully opposes Senate Bills 669 and 670.