

HOUSE BILL 885

N2, D1

CONSTITUTIONAL AMENDMENT

11r1531

By: **Delegates Bates, Afzali, Aumann, Cluster, Frank, Glass, Jacobs, Kipke, Krebs, McDermott, W. Miller, Norman, O'Donnell, Otto, Parrott, Ready, Schuh, Smigiel, and Stocksdale**

Introduced and read first time: February 11, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Orphans' Court – Change of Name to Estate Court**

3 FOR the purpose of proposing an amendment to the Maryland Constitution to change
4 the name of each Orphans' Court in this State to the Estate Court; and
5 submitting this amendment to the qualified voters of the State for their
6 adoption or rejection.

7 BY proposing an amendment to the Maryland Constitution

8 Article IV – Judiciary Department

9 Section 1, 3A(a), 4B(a)(1), 8(c), 18(b)(2), (3), and (4), 20(b), 40(a), (b), (c), and (e),
10 and 41

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

14 **Article IV – Judiciary Department**

15 1.

16 The Judicial power of this State is vested in a Court of Appeals, such
17 intermediate courts of appeal as the General Assembly may create by law, Circuit
18 Courts, **[Orphans'] ESTATE** Courts, and a District Court. These Courts shall be
19 Courts of Record, and each shall have a seal to be used in the authentication of all
20 process issuing from it.

21 3A.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

16 4B.

17 (a) (1) The Commission on Judicial Disabilities has the power to:

18 (i) Investigate complaints against any judge of the Court of
19 Appeals, any intermediate courts of appeal, the circuit courts, the District Court of
20 Maryland, or the [orphans'] ESTATE court; and

21 (ii) Conduct hearings concerning such complaints, administer
22 oaths and affirmations, issue process to compel the attendance of witnesses and the
23 production of evidence, and require persons to testify and produce evidence by
24 granting them immunity from prosecution or from penalty or forfeiture.

25 8.

26 (c) In all other cases of presentment or indictment, and in all suits or actions
27 at law or issues from the [Orphans'] ESTATE Court pending in any of the courts of
28 law in this State which have jurisdiction over the cause or case, in addition to the
29 suggestion in writing of either of the parties to the cause or case that the party cannot
30 have a fair and impartial trial in the court in which the cause or case may be pending,
31 it shall be necessary for the party making the suggestion to make it satisfactorily
32 appear to the court that the suggestion is true, or that there is reasonable ground for
33 the same; and thereupon the court shall order and direct the record of the proceedings
34 in the cause or case to be transmitted to some other court, having jurisdiction in the
35 cause or case, for trial. The right of removal also shall exist on suggestion in a cause or
36 case in which all the judges of the court may be disqualified under the provisions of
37 this Constitution to sit. The court to which the record of proceedings in such suit or
38 action, issue, presentment or indictment is transmitted, shall hear and determine that
39 cause or case in the same manner as if it had been originally instituted in that Court.

1 The General Assembly shall modify the existing law as may be necessary to regulate
2 and give force to this provision.

3 18.

4 (b) (2) Subject to paragraphs (3) and (4) of this subsection, the Chief
5 Judge of the Court of Appeals may, in case of a vacancy, or of the illness,
6 disqualification or other absence of a judge or for the purpose of relieving an
7 accumulation of business in any court assign any judge except a judge of the
8 **[Orphans'] ESTATE** Court to sit temporarily in any court except an **[Orphans']**
9 **ESTATE** Court.

10 (3) A retired judge of the Circuit Court for Montgomery County that
11 sits as the **[Orphans'] ESTATE** Court for Montgomery County may be assigned by the
12 Chief Judge of the Court of Appeals, upon approval of a majority of the Court of
13 Appeals, to do an act that a judge of the **[Orphans'] ESTATE** Court for Montgomery
14 County is authorized to perform.

15 (4) A retired judge of the Circuit Court for Harford County that sits as
16 the **[Orphans'] ESTATE** Court for Harford County may be assigned by the Chief Judge
17 of the Court of Appeals, upon approval of a majority of the Court of Appeals, to do an
18 act that a judge of the **[Orphans'] ESTATE** Court for Harford County is authorized to
19 perform.

20 20.

21 (b) The judges of the Circuit Courts for Montgomery and Harford Counties
22 shall each, alternately and in rotation and on schedules to be established by those
23 judges, sit as an **[Orphans'] ESTATE** Court for their County, and shall have and
24 exercise all the power, authority and jurisdiction which the present **[Orphans']**
25 **ESTATE** Courts now have and exercise, or which may hereafter be provided by law.

26 40.

27 (a) The qualified voters of the several Counties, except Montgomery County
28 and Harford County, shall elect three Judges of the **[Orphans'] ESTATE** Courts of
29 Counties who shall be citizens of the State and residents, for the twelve months
30 preceding, in the County for which they may be elected.

31 (b) The qualified voters of the City of Baltimore shall elect three Judges of
32 the **[Orphans'] ESTATE** Court for Baltimore City who shall be citizens of the State
33 and residents, for the twelve months preceding, in Baltimore City and who have been
34 admitted to practice law in this State and are members in good standing of the
35 Maryland Bar.

1 (c) The Judges shall have all the powers now vested in the [Orphans']
2 **ESTATE** Courts of the State, subject to such changes as the Legislature may prescribe.

3 (e) In case of a vacancy in the office of Judge of the [Orphans'] **ESTATE**
4 Court, the Governor shall appoint, subject to confirmation or rejection by the Senate,
5 some suitable person to fill the vacancy for the residue of the term.

6 41.

7 There shall be a Register of Wills in each county of the State, and the City of
8 Baltimore, to be elected by the legal and qualified voters of said counties and city,
9 respectively, who shall hold his office for four years from the time of his election and
10 until his successor is elected and qualified; he shall be re-eligible, and subject at all
11 times to removal for willful neglect of duty, or misdemeanor in office in the same
12 manner that the Clerks of the Courts are removable. In the event of any vacancy in
13 the office of the Register of Wills, said vacancy shall be filled by the Judges of the
14 [Orphans'] **ESTATE** Court, in which such vacancy occurs, until the next general
15 election for Delegates to the General Assembly when a Register shall be elected to
16 serve for four years thereafter.

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

22 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
23 proposed as an amendment to the Maryland Constitution shall be submitted to the
24 qualified voters of the State at the next general election to be held in November, 2012
25 for their adoption or rejection pursuant to Article XIV of the Maryland Constitution.
26 At that general election, the vote on this proposed amendment to the Constitution
27 shall be by ballot, and upon each ballot there shall be printed the words "For the
28 Constitutional Amendment" and "Against the Constitutional Amendment," as now
29 provided by law. Immediately after the election, all returns shall be made to the
30 Governor of the vote for and against the proposed amendment, as directed by Article
31 XIV of the Maryland Constitution, and further proceedings had in accordance with
32 Article XIV.