

# SENATE BILL 616

D1

CONSTITUTIONAL AMENDMENT

2lr2185

---

By: **Senator Jennings**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

---

Committee Report: Favorable

Senate action: Adopted with floor amendments

Read second time: March 20, 2012

---

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Judges—Mandatory Commission to Study the Retirement of Judges**

3 FOR the purpose of ~~proposing amendments to the Maryland Constitution altering the~~  
4 ~~mandatory retirement age for judges under certain circumstances; requiring a~~  
5 ~~certain certification of certain judges; making certain technical corrections;~~  
6 ~~providing for the application of this Act; and submitting this amendment to the~~  
7 ~~qualified voters of the State for their adoption or rejection~~ establishing the  
8 Commission to Study the Retirement of Judges; providing for the membership  
9 and staffing of the Commission; requiring the Governor to designate a chair of  
10 the Commission; establishing that the members of the Commission may not  
11 receive compensation but are entitled to a certain reimbursement; establishing  
12 the duties of the Commission; requiring the Commission to make a certain  
13 report on or before a certain date; providing for the termination of this Act; and  
14 generally relating to the Commission to Study the Retirement of Judges.

15 ~~BY proposing an amendment to the Maryland Constitution~~

16 ~~Article IV—Judiciary Department~~

17 ~~Section 3, 3A, 5A(f), 18B, and 41D~~

18 ~~BY proposing an addition to the Maryland Constitution~~

19 ~~Article IV—Judiciary Department~~

20 ~~Section 3B~~

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

4 ~~Article IV—Judiciary Department~~

5 ~~3.~~

6 ~~(A) Except for the Judges of the District Court, the Judges of the several~~  
 7 ~~Courts other than the Court of Appeals or any intermediate courts of appeal shall,~~  
 8 ~~subject to the provisions of Section 5 of this Article of the Constitution, be elected in~~  
 9 ~~Baltimore City and in each county, by the qualified voters of the city and of each~~  
 10 ~~county, respectively, all of the said Judges to be elected at the general election to be~~  
 11 ~~held on the Tuesday after the first Monday in November, as now provided for in the~~  
 12 ~~Constitution.~~

13 ~~(B) Each of the said Judges shall hold his office for the term of fifteen years~~  
 14 ~~from the time of his election, and until his successor is elected and qualified, or until~~  
 15 ~~he shall have attained the age of [seventy] SEVENTY-TWO years, whichever may first~~  
 16 ~~happen, and be reeligible thereto until he shall have attained the age of [seventy]~~  
 17 ~~SEVENTY-TWO years, and not after.~~

18 ~~(C) In case of the inability of any of said Judges to discharge his duties with~~  
 19 ~~efficiency, by reason of continued sickness, or of physical or mental infirmity, it shall~~  
 20 ~~be in the power of the General Assembly, two-thirds of the members of each House~~  
 21 ~~concurring, with the approval of the Governor to retire said Judge from office.~~

22 ~~3A.~~

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

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

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

1       ~~(b) The provisions of this section apply, notwithstanding provisions~~  
2 ~~appearing elsewhere in this Article pertaining to retirement of judges upon attaining~~  
3 ~~age [70] 72.~~

4 ~~3B.~~

5       ~~(A) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE,~~  
6 ~~A JUDGE OF THE APPELLATE COURTS, A CIRCUIT COURT, OR THE DISTRICT~~  
7 ~~COURT WHO ATTAINS THE AGE OF SEVENTY YEARS ON OR AFTER JANUARY 1,~~  
8 ~~2013, AND IS OTHERWISE ENTITLED TO HOLD OFFICE MAY SERVE, ON NOTICE~~  
9 ~~TO THE PUBLIC, UNTIL THE JUDGE'S SEVENTY SECOND BIRTHDAY, PROVIDED~~  
10 ~~THAT FROM AND AFTER THE JUDGE'S SEVENTIETH BIRTHDAY, A MAJORITY OF~~  
11 ~~JUDGES OF THE COURT OF APPEALS ANNUALLY CERTIFIES THAT THE JUDGE IS~~  
12 ~~PHYSICALLY, MENTALLY, AND TEMPERAMENTALLY QUALIFIED TO CONTINUE TO~~  
13 ~~PERFORM THE DUTIES OF OFFICE.~~

14       ~~(2) A JUDGE SO CERTIFIED SHALL, DURING THE YEAR~~  
15 ~~FOLLOWING CERTIFICATION, BE ELIGIBLE FOR REAPPOINTMENT OR~~  
16 ~~REELECTION FOR AN ADDITIONAL TERM AS PROVIDED IN SECTIONS 3, 18B, AND~~  
17 ~~41D OF THIS ARTICLE.~~

18       ~~(B) IF THE CERTIFICATION OF A JUDGE OF THE COURT OF APPEALS IS~~  
19 ~~AT ISSUE, THAT JUDGE SHALL EXCUSE HIMSELF OR HERSELF FROM~~  
20 ~~PARTICIPATION IN THE CERTIFICATION, AND THE CHIEF JUDGE OF THE COURT~~  
21 ~~OF SPECIAL APPEALS SHALL SIT AS A MEMBER OF THE COURT OF APPEALS FOR~~  
22 ~~THE PURPOSE OF CONSIDERING THAT CERTIFICATION.~~

23 ~~5A.~~

24       ~~(f) An appellate court judge shall retire when he attains his [seventieth]~~  
25 ~~SEVENTY SECOND birthday.~~

26 ~~18B.~~

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

30       ~~(b) Each judge of an appellate court who is in office for an elected term on~~  
31 ~~the effective date of these amendments, unless he dies, resigns, retires, or is otherwise~~  
32 ~~lawfully removed, shall continue in office until the general election next after the end~~  
33 ~~of his elected term, or until his [seventieth] SEVENTY SECOND birthday, whichever~~  
34 ~~first occurs. His continuance in office is then subject to the provisions of section 5A(c)~~  
35 ~~and (d) of this article, applicable to judges of that court, but in no event shall any judge~~  
36 ~~continue in office after his [seventieth] SEVENTY SECOND birthday.~~

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

~~41D.~~

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

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

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

~~(4) A judge appointed by the Governor may take office upon qualification and before confirmation by the Senate, but shall cease to hold office at the close of the regular annual session of the General Assembly next following his appointment or during which he shall have been appointed by the Governor, if the Senate shall not have confirmed his appointment before then.~~

~~(B) (1) Each judge appointed by the Governor and confirmed by the Senate shall hold the office for a term of ten years or until he shall have attained the age of [seventy] SEVENTY TWO years whichever may first occur.~~

~~(2) If the ten year term of a judge shall expire before that judge shall have attained the age of [seventy] SEVENTY TWO years, that judge shall be reappointed by the Governor, with the Senate's consent, for another ten year term or until he shall have attained the age of [seventy] SEVENTY TWO years, whichever may first occur.~~

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

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

1           ~~SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section~~  
2 ~~proposed as an amendment to the Maryland Constitution shall be submitted to the~~  
3 ~~qualified voters of the State at the next general election to be held in November, 2012~~  
4 ~~for their adoption or rejection pursuant to Article XIV of the Maryland Constitution.~~  
5 ~~At that general election, the vote on this proposed amendment to the Constitution~~  
6 ~~shall be by ballot, and upon each ballot there shall be printed the words "For the~~  
7 ~~Constitutional Amendment" and "Against the Constitutional Amendment," as now~~  
8 ~~provided by law. Immediately after the election, all returns shall be made to the~~  
9 ~~Governor of the vote for and against the proposed amendment, as directed by Article~~  
10 ~~XIV of the Maryland Constitution, and further proceedings had in accordance with~~  
11 ~~Article XIV.~~

12           (a)   There is a Commission to Study the Retirement of Judges.

13           (b)   The Commission consists of the following members:

14                   (1)   two members of the Senate of Maryland, appointed by the  
15 President of the Senate;

16                   (2)   two members of the House of Delegates, appointed by the Speaker  
17 of the House;

18                   (3)   three members appointed by the Governor, one of whom may not  
19 be an attorney and may not have a personal or professional connection to the  
20 Maryland Judiciary;

21                   (4)   three members appointed by the Maryland Judicial Conference;  
22 and

23                   (5)   one member representing the Maryland State Bar Association,  
24 appointed by the President of the Association.

25           (c)   The Governor shall designate the chair of the Commission.

26           (d)   The Department of Legislative Services shall provide staff for the  
27 Commission.

28           (e)   A member of the Commission:

29                   (1)   may not receive compensation as a member of the Commission; but

30                   (2)   is entitled to reimbursement for expenses under the Standard  
31 State Travel Regulations, as provided in the State budget.

32           (f)   The Commission shall study issues relating to:

1           (1) the current mandatory retirement age for judges in the State and  
2 potential changes to the current age;

3           (2) assigning retired judges to sit temporarily in all courts in the  
4 State;

5           (3) requiring continuing education for all retired judges who are  
6 available to sit temporarily in court;

7           (4) the impact of appointing retired judges to sit temporarily in court  
8 on the length of time between argument on a case and the issuance of opinion,  
9 including a comparison of the average length of time between oral arguments and the  
10 issuance of an opinion assigned to a sitting judge and the average length of time  
11 between oral arguments and the issuance of an opinion issued by a retired judge  
12 sitting temporarily; and

13           (5) whether an upper limit should be established for the age of a  
14 retired judge assigned to perform judicial duties.

15           (g) On or before January 1, 2014, the Commission shall report its findings to  
16 the Governor and, in accordance with § 2-1246 of the State Government Article, the  
17 General Assembly.

18           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 July 1, 2012. It shall remain effective for a period of 1 year and 7 months and, at the  
20 end of January 31, 2014, with no further action required by the General Assembly,  
21 this Act shall be abrogated and of no further force and effect.

Approved:

---

Governor.

---

President of the Senate.

---

Speaker of the House of Delegates.