



SPONSOR: Rep. Lynn & Sen. Buckson

HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 237

AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV OF THE DELAWARE CONSTITUTION RELATING TO THE JUDICIARY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1           Section 1. Amend § 2, Article IV of the Delaware Constitution by making deletions as shown by strike through  
2 and insertions as shown by underline as follows:

3           § 2. Justices of Supreme Court and other State Judges; qualifications; residence; precedence.

4           Section 2.(a)(1) There shall be ~~five~~ 7 Justices of the Supreme Court who shall be citizens of the State and learned  
5 in the law. In addition to the qualifications for appointment to the Supreme Court under this paragraph (a)(1), an individual  
6 must, for at least 1 year immediately before the submission of an application for consideration to appointment to the  
7 Supreme Court, be a resident of the county for which the individual is required to be appointed under paragraph (a)(2) of  
8 this Section.

9           (2) At least 2 Justices must be residents of New Castle County, at least 2 Justices must be residents of Kent  
10 County, and at least 2 Justices must be residents of Sussex County. The seventh Justice may be from any county.

11           (3) One of them shall be the Chief Justice who shall be designated as such by his or her appointment and who  
12 when present shall preside at all sittings of the Court. In the absence of the Chief Justice the Justice present who is  
13 senior in length of service shall preside. If it is otherwise impossible to determine seniority among the Justices, they  
14 shall determine it by lot and certify accordingly to the Governor.

15           (b) In addition to members of the Supreme Court there shall be other State Judges, who shall be citizens of the  
16 State and learned in the law. They shall include: (1) the Chancellor and the Vice-Chancellors; (2) The President Judge and  
17 the Judges of the Superior Court, three of whom shall be Resident Associate Judges and one of whom shall after  
18 appointment reside in each county of the State; (3) the Chief Judge and the Judges of the Family Court; (4) the Chief Judge  
19 and Judges of the Court of Common Pleas, one of whom after appointment shall reside in each county of the State; and (5)  
20 the Chief Magistrate of the Justice of the Peace Court.

21           (c) There shall also be such number of additional Vice-Chancellors and Judges as may hereinafter be provided for  
22 by Act of the General Assembly. Each of such Vice-Chancellors and Judges shall be citizens of the State and learned in the  
23 law.

24           (d) If it is otherwise impossible to determine seniority of service among the Vice-Chancellors or among the said  
25 Judges, they shall determine it by lot respectively and certify accordingly to the Governor.

26           (e) The tenure and status of the Justices of the Supreme Court and State Judges as shall have been appointed as  
27 provided for by the Constitution or by Act of the General Assembly prior to the time this amended Article IV of this  
28 Constitution becomes effective shall in no wise be affected.

29           Section 2. Amend § 3, Article IV of the Delaware Constitution by making deletions as shown by strike through  
30 and insertions as shown by underline as follows:

31           § 3. Appointment of judges; terms of office; vacancies; political representation; confirmation of appointment.

32           Section 3. (a) The Chief Justice and Justices of the Supreme Court, the Chancellor and Vice-Chancellors of the  
33 Court of Chancery, the President Judge and Judges of the Superior Court, the Chief Judge and Judges of the Family Court,  
34 the Chief Judge and Judges of the Court of Common Pleas, and the Chief Magistrate of the Justice of the Peace Court shall  
35 be appointed by the Governor, by and with the consent of a majority of all the members elected to the Senate, for a term of  
36 12 years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon  
37 taking the oath of office prescribed by this Constitution. The Governor shall submit his or her appointment within a period  
38 from 30 days before to 90 days after the occurrence of a vacancy howsoever caused. If a vacancy shall occur, by expiration  
39 of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within a period from 30 days  
40 before to 90 days after the happening of any such vacancy convene the Senate for the purpose of confirming his or her  
41 appointment to fill said vacancy and the transaction of such other executive business as may come before it. Such vacancy  
42 shall be filled as aforesaid for the full term. Notwithstanding a vacancy, whether occurring when the Senate is or is not in  
43 session, an incumbent whose term has expired may hold over in office until the incumbent, or a new appointee, is  
44 confirmed and takes the oath of office for the next term, but in no event shall an incumbent whose term has expired hold  
45 over in office for more than 90 days after the expiration of the term. In all instances, the term of a new or reappointed Chief  
46 Justice or Justice of the Supreme Court, Chancellor or Vice-Chancellor of the Court of Chancery, President Judge or Judge  
47 of the Superior Court, the Chief Judge and Judges of the Family Court, the Chief Judge and Judges of the Court of  
48 Common Pleas, or Chief Magistrate of the Justice of the Peace Court shall begin after the occurrence of the vacancy and on  
49 the date the oath of office is taken, thus qualifying the individual to serve, but the appointment shall be forfeited if such  
50 oath is not taken within 30 days of confirmation.

51 (b) Appointments to the office of the State Judiciary shall at all times be subject to all of the following limitations:

52 (1) First, ~~not more than three of the five~~ 4 of the 7 Justices of the Supreme Court in office at the same ~~time,~~  
53 ~~shall be of one major political party, and two of said Justices shall be of the other major political party.~~ time shall be of  
54 the same political party.

55 (2) Second, at any time when the total number of Judges of the Superior Court shall be an even number not  
56 more than one-half of the members of all such offices shall be of the same political party; and at any time when the  
57 number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices  
58 shall be of the same ~~major political party, the remaining members of such offices shall be of the other major political~~  
59 ~~party.~~ political party.

60 (3) Third, at any time when the total number of the offices of the Justices of the Supreme Court, the Judges of  
61 the Superior Court, the Chancellor and all the Vice-Chancellors shall be an even number, not more than one-half of the  
62 members of all such offices shall be of the same ~~major~~ political party; and at any time when the total number of such  
63 offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the  
64 same ~~major political party, the remaining members of the Courts above enumerated shall be of the other major political~~  
65 ~~party.~~ political party.

66 (4) Fourth, at any time when the total number of Judges of the Family Court shall be an even number, not  
67 more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges  
68 shall be an odd number, then not more than a majority of one Judge shall be of the same political party.

69 (5) Fifth, at any time when the total number of Judges of the Court of Common Pleas shall be an even  
70 number, not more than one-half of the Judges shall be of the same political party; and at any time when the total  
71 number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political  
72 party.

73 (6) Sixth, before sending the name of any ~~person~~ individual to the Senate for confirmation as the appointment  
74 of the Governor to a vacancy in any Judicial Office as aforesaid, the Governor shall, not less than ten (10) days before  
75 sending the name of such ~~person~~ individual to the Senate for confirmation, address a public letter to the President of  
76 the Senate informing him or her that he or she intends to submit to the Senate for confirmation as an appointment to  
77 such vacancy the name of the ~~person~~ individual he or she intends to appoint.

78 Section 3. Amend § 12, Article IV of the Delaware Constitution by making deletions as shown by strike through  
79 and insertions as shown by underline as follows:

80 § 12. Composition of Supreme Court; designation of temporary Justices; quorum; opening and adjourning court.

81 Section 12. A quorum of the Supreme Court shall consist of not less than ~~three~~ 4 Justices. The entire Court shall sit  
82 in any criminal case in which the accused has been sentenced to death and in such other civil and criminal cases as the  
83 Court, by rule, or the General Assembly, upon the concurrence of two-thirds of all the members elected to each house, shall  
84 determine. In case of a lack of quorum by reason of vacancies in their number, incapacity, or disqualification to sit by  
85 reason of interest, or to constitute a ~~three-member~~ 4 member panel of the Court, the Chief Justice of the Supreme Court, or  
86 in case of his or her absence from the State, disqualification, incapacity, or if there be a vacancy in that office, the next  
87 qualified and available Justice, who by seniority is next in rank to the Chief Justice, shall have the power to designate  
88 judges from among the judges of the constitutional courts to sit in the Supreme Court temporarily to satisfy the number of  
89 Justices required by law. It shall be the duty of the judges of the constitutional courts so designated to sit accordingly. No  
90 judge shall be so designated to sit in the Supreme Court in any cause in which he or she sat below. Any one of the Justices  
91 of the Supreme Court may open and adjourn court.

92 Section 4. Of the 2 Justices of the Supreme Court seats created by this Act, 1 must be a resident of Kent County  
93 and 1 must be a resident of Sussex County. The requirement that at least 2 Justices must be residents of New Castle County,  
94 Kent County, and Sussex County applies beginning with the next vacancy of a Justice of the Supreme Court to occur,  
95 whether by expiration of term or otherwise. A resident of New Castle County may not be appointed as a member of the  
96 Supreme Court until 2 Justices are residents of Kent County and 2 Justices are residents of Sussex County.

#### SYNOPSIS

This Act is the first leg of a constitutional amendment to increase the number of Justices of the Supreme Court to 7 and to require that of the 7 Justices appointed to the Supreme Court, at least 2 must be residents of Kent County, at least 2 must be residents of Sussex County, and at least 2 must be residents of New Castle County. The seventh Justice may be from any county.

Sections 2 and 3 of this Act make necessary conforming amendments to the Delaware Constitution based on the increase in the number of Justices of the Supreme Court.

Section 2 of this Act also removes the unconstitutional restrictions limiting the appointment of judges to the Supreme Court, Court of Chancery, and Superior Court to members of the two major political parties. This amendment is in response to the stipulated consent judgment and order entered in *James R. Adams v. The Honorable John Carney*, C.A. No. 20-1680-MN (D. Del.), Jan. 30, 2023.

Because the Supreme Court currently consists of 4 residents of New Castle County and 1 resident of Sussex County, Section 4 of this Act requires that of the 2 Justices of the Supreme Court seats created by this Act 1 must be a resident of Kent County and 1 must be a resident of Sussex County. Section 4 of this Act also provides that the requirement that at least 2 Justices must be residents of New Castle County, Kent County, and Sussex County applies beginning with the next vacancy of a Justice of the Supreme Court to occur, whether by expiration of term or otherwise.

This Act requires a greater than majority vote for passage because § 1 of Article XVI of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the Delaware Constitution.

Amending the Delaware Constitution requires not only the passing of the changes in this Act, but also passage of the same changes after the next general election by the next General Assembly.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.