

## ARTICLE V THE JUDICIAL DEPARTMENT

### Editor's Note

The amendment ratified by 1973 Act No 132 (1973 (58) 161), transferred former Article VI (Jurisprudence) to this article, and revised and rewrote this article, substituting present Section Section 1 to 23 for former Section Section 1 to 34 of former Article V and Section Section 1 to 6 of former Article VI.

### **SECTION 1.** Judicial power vested in certain courts.

The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

### Editor's Note

For similar provisions in Constitution of 1868, see Const 1868, Art IV, Section 1.

### **SECTION 2.** Supreme Court.

The Supreme Court shall consist of a Chief Justice and four Associate Justices, any three of whom shall constitute a quorum for the transaction of business. The Chief Justice shall preside, and in his absence the senior Associate Justice. In all cases decided by the Supreme Court, the concurrence of three of the Justices shall be necessary for a reversal of the judgment below. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

### Editor's Note

The present provisions of the first two sentences of this section are identical to the first two sentences of former Section 2 of Article V as it existed prior to the 1973 revision. The present provisions of the third sentence of this section are similar to the first sentence of Section 12 of Article V as it existed prior to the 1973 revision. For similar provisions in Constitution of 1868, see Const 1868, Art IV, Section Section 2, 12.

### **SECTION 3.** Election of members of Supreme Court.

The members of the Supreme Court shall be elected by a joint public vote of the General Assembly for a term of ten years, and shall continue in office until their successors shall be elected and qualified, and shall be classified so that the term of one of them shall expire every two years. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

### Editor's Note

The present provisions of this section are similar to third sentence of former Section 2 of Article V as it existed prior to the 1973 revision. For similar provisions in Constitution of 1868, see Const 1868, Art IV, Section 2.

### **SECTION 4.** Powers of Chief Justice; rules; admission to practice of law and discipline of persons admitted.

The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. He shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State. The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system. Provided, each county shall be entitled to four weeks of court each year and such terms therefor shall be provided for by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the

State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

**SECTION 4.A.** Submission of Supreme Court rules to judiciary committees; disapproval by General Assembly.

All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly during a regular session, but not later than the first day of February during each session. Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three-fifths of the members of each House present and voting. (1985 Act No. 8.)

**SECTION 5.** Jurisdiction of Supreme Court.

The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs. The Court shall have appellate jurisdiction only in cases of equity, and in such appeals they shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside. The Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly may prescribe. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

**Editor's Note**

The present provisions of this section are similar to former Section 4 of Article V as it existed prior to the 1973 revision. For similar provisions in Constitution of 1868, see Const 1868, Art IV, Section 4.

**SECTION 6.** Reporter and Clerk of Supreme Court.

There shall be appointed by the Justices of the Supreme Court a Reporter and a Clerk of Court, whose terms and duties shall be prescribed by the Court. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

**Editor's Note**

The present provisions of this section are similar to former Section 7 of Article V as it existed prior to the 1973 revision. For similar provisions in Constitution of 1868, see Const 1868, Art IV, Section 7.

**SECTION 7.** Composition and organization of Court of Appeals; terms of Court of Appeals.

The Court of Appeals shall consist of a Chief Judge and no fewer than five Associate Judges, the appropriate number to be determined by law. The Chief Judge shall preside, and in his absence the senior Associate Judge. Subject to the supervision of the Chief Justice of the Supreme Court, the Chief Judge shall set the terms of the Court of Appeals. The structure and organization of the Court of Appeals shall be determined by the General Assembly. The Court of Appeals shall sit in panels. The General Assembly may by statute provide for the court to sit en banc. (1985 Act No. 9.)

**Editor's Note**

Provisions similar to those which formerly appeared at Art. V Section 7 may now be found at Art. V Section 11.

**SECTION 8.** Election of members of Court of Appeals.

The members of the Court of Appeals shall be elected by a joint public vote of the General Assembly for a term of six years and shall continue in office until their successors shall be elected and qualify. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. Provided, that for the first election of members of the Court of Appeals, the General Assembly shall by law provide for staggered terms. (1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 8 may now be found at Art. V Section 12.

**SECTION 9.** Jurisdiction of Court of Appeals; binding effect of Supreme Court decisions.

The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law. The decisions of the Supreme Court shall bind the Court of Appeals as precedents. (1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 9 may now be found at Art. V Section 13.

**SECTION 10.** Appointment of Clerk of Court of Appeals.

There shall be appointed by the Judges of the Court of Appeals a clerk of court, whose term and duties shall be prescribed by the Court of Appeals and shall be subject to the general administrative authority and supervision of the Chief Justice. (1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 10 may now be found at Art. V Section 14.

**SECTION 11.** Jurisdiction of Circuit Court.

The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 11 may now be found at Art. V Section 15.

**SECTION 12.** Jurisdiction in matters testamentary and of administration, minors and persons mentally incompetent.

Jurisdiction in matters testamentary and of administration, in matters appertaining to minors and to persons mentally incompetent, shall be vested as the General Assembly may provide, consistent with the provisions of Section 1 of this article. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 12 may now be found at Art. V Section 16.

**SECTION 13.** Judicial circuits.

The General Assembly shall divide the State into judicial circuits of compact and contiguous territory. For each circuit a judge or judges shall be elected by a joint public vote of the General Assembly; provided, that in any contested election, the vote of each member of the General Assembly present and voting shall be recorded. He shall hold office for a term of six years, and at the time of his election he shall be an elector of a county of, and during his continuance in office he shall reside in, the circuit of which he is judge.

The General Assembly may by law provide for additional circuit judges, to be assigned by the Chief Justice. Such additional circuit judges shall be elected in the same manner and for the same term as provided in the preceding paragraph of this section for other circuit judges, except that residence in a particular county or circuit shall not be a qualification for office. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 13 may now be found at Art. V Section 17.

**SECTION 14.** Rotation of judges.

Judges of the Circuit Court shall interchange circuits and all judges shall be systematically rotated throughout the State as directed by the Chief Justice. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 14 may now be found at Art. V Section 18.

**SECTION 15.** Qualifications of justices and judges.

No person shall be eligible to the office of Chief Justice, Associate Justice of the Supreme Court, judge of the court of appeals, or judge of the circuit court who is not at the time of his election a citizen of the United States and of this State, and has not attained the age of at least thirty-two years, has not been a licensed attorney at law for at least eight years, and has not been a resident of this State for five years next preceding his election.

Any justice or judge serving in office on the effective date of the provisions of this section requiring a justice or judge to be at least thirty-two years of age and to have at least eight years of service as a licensed attorney at law who is not of that age or who has not been licensed for this required period of time may continue to serve for the remainder of his current term and is considered to have the requisite age and years of service as a licensed attorney for purposes of future re-elections to that judicial office. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9; 1997 Act No. 76.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 15 may now be found at Art. V Section 19.

**SECTION 16.** Compensation of Justices and judges; practice of law and dual office holding.

The Justices of the Supreme Court and the judges of the Court of Appeals and Circuit Court shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term. They shall not, while in office, engage in the practice of law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions except in the militia, nor shall they be allowed any fees or perquisites of office. Any such Justice or judge who shall become a candidate for a popularly elected office shall thereby forfeit his judicial office. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 16 may now be found at Art. V Section 20.

**SECTION 17.** Removal or retirement of judges.

Within the unified court system, the Supreme Court shall have power, after hearing, to remove or retire any judge from office upon a finding of disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character. A Justice shall not sit in any hearing involving his own removal or retirement. Implementation and enforcement of this section may be by rule or order of the Supreme Court. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 17 may now be found at Art. V Section 21.

**SECTION 18. Vacancies.**

All vacancies in the Supreme Court, Court of Appeals, or Circuit Court shall be filled by elections as prescribed in Sections 3, 8, and 13 of this article; provided, that if the unexpired term does not exceed one year such vacancy may be filled by the Governor. When a vacancy is filled by either appointment or election, the incumbent shall hold office only for the unexpired term of his predecessor. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 18 may now be found at Art. V Section 22.

**SECTION 19. Disqualification of Justices and judges; temporary appointments.**

The General Assembly shall specify the grounds for disqualification of Justices and judges to sit on certain cases. The General Assembly shall also provide for the temporary appointment of men learned in the law to sit as special Justices and judges when the necessity for such appointment shall arise. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 19 may now be found at Art. V Section 23.

**SECTION 20. Powers of Justices and judges at chambers.**

Each of the Justices of the Supreme Court and judges of the Court of Appeals and Circuit Court and of all other courts of record shall have the same power at chambers to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, and interlocutory writs or orders of injunction as when in open court. The judges of the Court of Appeals and Circuit Court and other courts of record shall have such additional powers at chambers as the General Assembly may provide, except in matters required to be determined in a public trial. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 20 may now be found at Art. V Section 24.

**SECTION 21. Charge to jury.**

Judges shall not charge juries in respect to matters of fact, but shall declare the law. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 21 may now be found at Art. V Section 25.

**SECTION 22. Grand and petit juries.**

The petit jury of the Circuit Court shall consist of twelve members and the number of jurors of other courts must be determined by law. All jurors in any trial court must agree to a verdict in order to render the same. The grand jury of each county, and the state grand jury, as the General Assembly may establish by general law, shall consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the Court. Each juror must be a resident of this State and have such other qualifications as the

General Assembly may prescribe. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9; 1989 Act No. 5; 1989 Act No. 7.)

Editor's Note

Former Section 22, entitled: Existing courts continued [1972 (57) 3176; 1973 (58) 161] was repealed.

**SECTION 23.** Change of venue.

It shall be the duty of the General Assembly to pass laws for the change of venue in all cases, civil and criminal, upon proper showing, supported by affidavit, that a fair and impartial trial cannot be had in the county where such action or prosecution was commenced. The State shall have the same right to move for a change of venue that a defendant has for such offenses as the General Assembly may prescribe. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Editor's Note

Provisions similar to those which formerly appeared at Art. V Section 23 may now be found at Art. V Section 26.

**SECTION 24.** Law enforcement officials, prosecutors and administrative officers; Attorney General.

There shall be elected in each county by the electors thereof a clerk of the circuit court, a sheriff, and a coroner; and in each judicial circuit a solicitor shall be elected by the electors thereof. All of these officers shall serve for terms of four years and until their successors are elected and qualify. The General Assembly shall provide by law for their duties and compensation.

The General Assembly also may provide by law for the age and qualifications of sheriffs and coroners, and the selection, duties, and compensation of other appropriate officials to enforce the criminal laws of the State, to prosecute persons under these laws, and to carry on the administrative functions of the courts of the State.

The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record. (1972 (57) 3176; 1973 (58) 161; 1973 (58) 863; 1975 (59) 46; 1985 Act No. 9; 1989 Act No. 10; 1995 Act No. 35.)

**SECTION 25.** Publication of Supreme Court and Court of Appeals decisions.

The General Assembly shall provide for the publication of the decisions of the Supreme Court and the Court of Appeals. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

**SECTION 26.** Magistrates.

The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law. The General Assembly shall provide for their terms of office and their civil and criminal jurisdiction. The terms of office must be uniform throughout the State. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9; 1987 Act No. 3.)

**SECTION 27.** Judicial Merit Selection Commission.

In addition to the qualifications for circuit court and court of appeals judges and Supreme Court justices contained in this article, the General Assembly by law shall establish a Judicial Merit Selection Commission to consider the qualifications and fitness of candidates for all judicial positions on these courts and on other courts of this State which are filled by election of the General Assembly. The General Assembly must elect the judges and justices from among the nominees of the commission to fill a vacancy on these courts.

No person may be elected to these judicial positions unless he or she has been found qualified by the commission. Before a sitting member of the General Assembly may submit an application with the commission for his nomination to a judicial office, and before the commission may accept or consider such an application, the member of the General Assembly must first resign his office and have been out of office for a period established by law. Before a member of the commission may submit an application with the

commission for his nomination to a judicial office, and before the commission may accept or consider such an application, the member of the commission must not have been a member of the commission for a period to be established by law. (1997 Act No. 76.)