

## ELIMINATE AGE LIMIT FOR JUDGES

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**House Joint Resolution "G"**  
**(Reported from committee without amendment)**

Analysis available at  
<http://www.legislature.mi.gov>

**Sponsor: Rep. Hank Vaupel**

**Committee: Judiciary**

**Complete to 5-2-17**

**BRIEF SUMMARY:** House Joint Resolution G would amend Article VI, Section 19 of the Michigan Constitution of 1963 to eliminate the age limitation for eligibility for election or appointment to a judicial office. The resolution would require voter approval at the next general election. A general election is held in November of an even-numbered year.

**FISCAL IMPACT:** HJR G would have an indeterminate, but likely minimal, fiscal impact on the state and on local units of government. Judges remaining on the bench past age 70 would not cost the state additional money because the retiring judge would likely be replaced, and the replacement judge would be paid the same salary amount as the retiring judge. The fiscal impact would occur if the judgeship was slated for elimination upon the retirement of the judge and the sitting judge decided to run for reelection past his or her 70th birthday. In this case of postponing the judgeship elimination, savings that would have been realized by the state from not having to pay the salary, and savings that would have been realized by the local units from not having to pay fringe benefit and staff costs, would also be postponed.

### **THE APPARENT PROBLEM:**

According to the State Court Administrative Office, 94 incumbent judges will be ineligible to run for reelection when their current terms expire due to the current age restriction.

At least 16 states have no age retirement for judges, though most do. Michigan is currently one of 18 states that require retirement once a judge or justice has reached age 70. Some of the states with mandatory retirement ages require a judge to retire as soon as reaching the age in question, and some forbid a judge to run or be appointed upon reaching that age (as is the case in Michigan).

Recently, the Michigan Supreme Court declined to hear a lawsuit filed challenging the state's ban on judges over 70 seeking reelection; the age-discrimination case had previously been dismissed by the Court of Claims.

### **THE CONTENT OF THE JOINT RESOLUTION:**

House Joint Resolution G would amend Article VI, Section 19 of the Michigan Constitution of 1963 to eliminate the age limitation for eligibility for election or appointment to a judicial office. The resolution would require voter approval at the next general election. A general election is held in November of an even-numbered year.

Presently, judges cannot seek reelection once they reach 70 years of age. The following requirements currently exist for judges and justices in Michigan:

- For justices of the Michigan Supreme Court, or judges on the court of appeals, circuit court, probate court, and other courts, one must be licensed to practice law in the state.
- For justices of the supreme court or judges on a trial court or the court of appeals, one must have been admitted to practice law for at least five years. This provision was added to the Michigan Constitution by Senate Joint Resolution D (Proposal B), which the voters approved with 81% of the vote in 1996.<sup>1</sup>
- For all judicial offices, one may not be elected or appointed after reaching age 70.

House Joint Resolution G would amend the final requirement to eliminate the restriction on eligibility for election or appointment based on age.

The resolution would require voter approval at the next general election, which would be November 6, 2018.

## ***ARGUMENTS:***

### ***For:***

Proponents of the bill argue that the existing age restriction for Michigan judges is actually age discrimination: using age as the only factor that determines whether a judge may continue to serve in his or her full capacity. Currently, when a judge is barred from serving as a justice of the court due to age, that judge can, in certain circumstances, still sit on the bench as a "visiting judge" for the rest of his or her life. Many judges who are forced off the bench due to the age restriction are of sound mind and fully capable of continuing with a full court docket.

In addition, there is no age limit for serving as a federal judge. For instance, the oldest judge to serve on the Supreme Court of the United States was Oliver Wendell Holmes, who was 90 years old when he retired in 1932. Currently, Ruth Bader Ginsburg is the oldest serving on the bench at 83 years old.

Age is not the only factor that can hinder a judge from performing judicial duties. Supporters of the bill argue that a judge who becomes unable to perform duties at any age, may voluntarily step down, or the Judicial Tenure Commission may take steps to remove the judge from the bench. Health issues can arise at any age, not just at an advanced age, and there are safeguards in place to protect the public from judges who are unfit to preside. Additionally, if the public is not confident in a particular judge's ability to serve, they are able to vote against that judge in an election.

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<sup>1</sup> <http://uselectionatlas.org/RESULTS/state.php?fips=26&year=1996&f=0&off=51&elect=0>

***Against:***

Opponents of the resolution argue that the common and accepted age of retirement in the United States is 65-67 years old. Many people, including law firm partners, are forced by their companies to retire at that age, regardless of health and competence. This practice should not be different for judgeships.

Additionally, imposing an age limit on judges is a form of term-limits, not age discrimination. The legislature, for example has term limits, and keeping age limits for judgeships will allow the courts to similarly benefit from turnover as incoming elected public servants bring varied experience and knowledge.

Critics note that the fact that judicial seats are elected is not always a safeguard against having unfit judges serve. Challengers of the resolutions also argue that there is historically a reluctance to challenge an incumbent, as incumbents are more likely to be reelected due to name recognition. While federal judges are able to serve for their lifetime, they are also appointed by the President of the United States and approved by the United States Senate. This is arguably a more rigorous process than voting based on name recognition.

As an alternative to eliminating the age limit, some opponents have suggested that the legislature increase the age of election eligibility to 75 years of age, or make the maximum for service 80 years of age. This way, those who are competent and willing to continue to serve may do so, while still allowing additional opportunities for the benefits of turnover of judgeships.

***POSITIONS:***

- Two Livingston County Judges submitted written testimony in support of the resolution. (2-16-17 and 2-21-17).
- Two Macomb County Circuit Court Judges testified in support of the resolution. (2-21-17)
- The Chief Justice of the Michigan Supreme Court testified in support of the resolution. (2-21-17)
- The Chief Judge of the Michigan Court of Appeals testified in support of the resolution. (2-21-17)
- Two District Court Judges submitted written testimony in support of the resolution. (2-21-17)
- A representative from the State Bar of Michigan indicated support for the resolution. (2-21-17; 4-25-17)
- A concerned citizen from Okemos, Michigan, testified in opposition to the resolution. (2-21-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.