

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



ENROLLED

HOUSE BILL No. 300

(By Mr. Speaker Mr. Thomas)



PASSED March 8, 1939

In Effect ninety days from Passage

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(BY MR. SPEAKER, MR. THOMAS)

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AN ACT to provide for the submission to the voters of the state of an amendment to article eight of the constitution of the state of West Virginia, to be known as the "Judiciary Amendment".

Be it enacted by the Legislature of West Virginia:

Section 1. *Submitting an Amendment to Article Eight of the Constitution.* The question of the ratification or rejection of an amendment to the constitution of the State of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, amending article eight of said constitution, by substituting a new article eight in lieu of said article as it now exists, shall be submitted to the voters of the state at the next general election to be held in the year one thousand nine hundred forty, which proposed amendment is as follows:

*Proposed Amendment***Article 8. Judicial Department.**

Section 1. *Judicial Department.* The judicial power of the
2 State shall be vested in a Supreme Court of Appeals, in cir-
3 cuit courts, in such inferior courts and tribunals as are herein
4 authorized, and in the judges of each of said courts and
5 tribunals.

Sec. 2. *Supreme Court of Appeals.* The Supreme Court
2 of Appeals shall consist of five judges. They shall be elected
3 by the voters of the State and shall hold office for the term
4 of twelve years, unless sooner removed in a manner pre-
5 scribed by this Constitution. They shall receive such salaries
6 as may be fixed by law, and the salary of no judge
7 shall be diminished during the term for which such judge
8 shall have been elected. Any judge in office when this article
9 takes effect shall continue in office until his term shall expire,
10 unless sooner removed in a manner prescribed by this Constitu-
11 tion. A majority of the judges of such court shall be a
12 quorum for the transaction of business.

Sec. 3. *Provisions for Filling Supreme Court Vacancies.*

2 If from any cause a vacancy shall occur in the Supreme

3 Court of Appeals, the Governor shall issue a writ of election
4 to fill such vacancy at the next general election for the resi-
5 due of the term; and in the meantime, he shall fill such va-
6 cancy by appointment until a judge shall be elected and
7 qualified. But if the unexpired term be less than two years,
8 the Governor shall fill such vacancy by appointment for the
9 unexpired term. The Legislature shall make provision by
10 law for selection of a substitute judge to act in lieu of any
11 judge of such court during his temporary incapacity to per-
12 form the duties of his office and shall fix the compensation
13 of such substitute judge.

Sec. 4. *Scope of Jurisdiction of Supreme Court of Ap-*
2 *peals.* The Supreme Court of Appeals shall have original
3 jurisdiction in cases of habeas corpus, mandamus, prohi-
4 bition and certiorari. It shall have appellate jurisdiction in
5 civil cases where the matter in controversy, exclusive of in-
6 terest and costs, is of greater value or amount than three
7 hundred dollars; in controversies concerning the title or
8 boundaries of land, the probate of wills, or the appointment
9 or qualification of a personal representative, guardian, com-
10 mittee or curator; in controversies concerning a mill, road,

11 way, ferry, or landing, or concerning the right of a corpor-
12 ation or county to levy tolls or taxes; in cases of quo war-
13 ranto, habeas corpus, mandamus, certiorari, and prohibition;
14 and in cases involving freedom or the constitutionality of a
15 law. It shall have appellate jurisdiction in criminal cases
16 where there has been a conviction of a felony or a misde-
17 meanor in a circuit court, and such appellate jurisdiction
18 where there has been a conviction in a criminal case in an in-
19 ferior court as may be conferred upon it by law. It shall
20 have such other appellate jurisdiction, in both civil and
21 criminal cases, as may be prescribed by law. It shall have
22 general supervisory control over all circuit and inferior
23 courts and tribunals under such regulations as may be pre-
24 scribed by law. In cases relating to the public revenue,
25 whether civil or criminal, the right of appeal shall belong to
26 the State as well as the defendant.

Sec. 5. *Writ of Error, Supersedeas and Appeals; Scope*
2 *and Form of Decisions.* A writ of error, supersedeas, or ap-
3 peal for review by the Supreme Court of Appeals of any ac-
4 tion, suit or proceeding shall be allowed only by the Supreme
5 Court of Appeals, or a judge thereof, upon a petition assign-

6 ing error in the judgment, decree or procedure of the cir-
7 cuit or inferior court, and then only after said court or
8 judge shall have examined and considered the record and as-
9 signment of errors and shall be satisfied that there is error
10 in such judgment, decree or procedure, or that the record
11 presents a point proper for the consideration of the Supreme
12 Court of Appeals.

13 No decision rendered by the Supreme Court of Appeals
14 shall be considered as binding upon any of the circuit or in-
15 ferior courts of the State, except in the particular case de-
16 cided, unless at least three judges of said court concur therein.

17 When a judgment or decree is reversed, modified or af-
18 firmed by the Supreme Court of Appeals, every point fairly
19 arising upon the record shall be considered and decided; the
20 reasons therefor shall be concisely stated in writing and pre-
21 served with the record; and it shall be the duty of the court
22 to prepare a syllabus of the points adjudicated in each case
23 in which at least three judges of said court concur. The
24 syllabus shall be prefixed to the published report of the
25 case.

Sec. 6. *Officers of the Supreme Court of Appeals.* The

2 officers of the Supreme Court of Appeals, except the re-
3 porter, shall be appointed and may be removed by the court
4 or, in vacation of the court, by the judges thereof. Their
5 duties and compensation shall be prescribed by law.

Sec. 7. *Terms of Supreme Court of Appeals.* At least two
2 terms of the Supreme Court of Appeals shall be held an-
3 nually at such times and places as may be prescribed by
4 law.

Sec. 8. *Circuit Courts and the Judges and Terms Thereof.*
2 The existing judicial circuits shall remain as they are until
3 changed by law, but the Legislature may rearrange the cir-
4 cuits at any session thereof next preceding any general elec-
5 tion of the judges of said circuits, and may increase or di-
6 minish the number thereof. A judge of a circuit court in of-
7 fice at the time of any such change shall continue a judge of
8 the circuit in which he shall reside after such change until
9 the expiration of the term for which he shall have been
10 elected, unless sooner removed in a manner prescribed by this
11 Constitution.

12 The judges shall be elected in each circuit by the voters
13 thereof. The number of judges to be elected in each circuit

14 shall be in proportion to the population of the circuit to be
15 determined by the latest official census of the United States.
16 The Legislature shall determine the proportion, which shall
17 be as nearly as practicable uniform for all the circuits in
18 the State. Each of the judges so elected shall hold office
19 for the term of eight years, unless sooner removed in a man-
20 ner prescribed by this Constitution, but the Legislature shall,
21 if necessary, fix at less than eight years the first term of the
22 first judge elected to fill any newly created circuit judgeship
23 in order that the terms of all circuit judges may expire at
24 the same time. A vacancy in the office of judge of the cir-
25 cuit court shall be filled in the same manner as a vacancy in
26 the office of judge of the Supreme Court of Appeals. Dur-
27 ing his continuance in office, a judge of a circuit court shall
28 reside in the circuit of which he is a judge. Any judge of a
29 circuit court in office when this article takes effect shall con-
30 tinue in office until his term expires, unless sooner removed
31 in a manner prescribed by this Constitution.

32 At least three regular terms of the circuit court shall in
33 each year be held in every county in the State. Provision by
34 law may be made for holding special terms of the circuit

35 court. Provision by law may also be made for holding regu-
36 lar and special terms thereof when, from any cause, a judge
37 shall fail to attend or cannot properly preside. A judge of
38 any circuit may be authorized by the Legislature or may be
39 authorized or required by the Supreme Court of Appeals to
40 hold court in any other circuit. Until action is taken by the
41 Supreme Court of Appeals, the Legislature shall by law
42 make provision for dividing the business of those circuits in
43 which there shall be more than one judge among the judges
44 thereof so as to promote and secure the convenient and ex-
45 peditious transaction of such business.

Sec. 9. *Jurisdiction of Circuit Courts.* The circuit courts
2 shall have supervision and control of all proceedings before
3 all inferior tribunals in their respective counties by man-
4 damus, prohibition and certiorari. They shall, except in cases
5 confined exclusively by this Constitution to some other tri-
6 bunal, have original and general jurisdiction of all matters
7 at law where the amount in controversy, exclusive of inter-
8 est and costs, exceeds two hundred dollars; of all cases of
9 habeas corpus, mandamus, quo warranto and prohibition;
10 and of all crimes and misdemeanors. They shall have ex-

11 exclusive, original and general jurisdiction in all cases in
12 equity. They shall have appellate jurisdiction in all cases,
13 civil and criminal, where an appeal, writ of error, or super-
14 sedeas may be allowed to the judgment or proceedings of
15 any county court, summary court, or inferior tribunal. The
16 circuit courts shall have all judicial power, authority, and
17 jurisdiction not vested by this Constitution or by the laws
18 consistent therewith in some other court or tribunal. They
19 shall also have such other jurisdiction, whether supervisory,
20 original, appellate, or concurrent, as is or may be prescribed
21 by law.

Sec. 10. *General Provisions Relating to Judges.* All judges
2 of the Supreme Court of Appeals and of the circuit courts
3 shall be commissioned by the Governor and shall receive such
4 salaries as may be fixed by law. The salary of no judge
5 shall be diminished during the term for which he shall have
6 been elected. Such judges may receive the mileage provided
7 by law. No judge, during his term of office, shall practice
8 the profession of law; nor shall he hold any other office
9 than that of judge, or accept any appointment or public
10 trust, under this or any other government, except as pro-

11 vided by law; nor shall he, during his continuance in office,
12 be eligible to any political office, or become a candidate for
13 any elective office or nomination thereto, except a judicial
14 office; and the violation of any of these provisions shall va-
15 cate his office.

Sec. 11. *How Judges May be Removed from Office.* Any
2 judge of the Supreme Court of Appeals or of a circuit court
3 may be removed from office by a vote of two-thirds of the
4 members elected to each House of the Legislature, each
5 House voting separately, when from age, disease, mental or
6 bodily infirmity, or intemperance, he is incapable of dis-
7 charging the duties of his office. No judge shall be removed
8 by virtue of this section unless he shall have had an oppor-
9 tunity to be heard in a joint meeting of both Houses, nor
10 unless he shall have received notice of the proceeding, with
11 a statement of the cause or causes alleged for his removal,
12 at least twenty days before the day on which action is taken.
13 Such notice may be given only upon the vote of a majority
14 of the members of each House present. In case of removal,
15 a statement of the cause or causes of removal shall be enter-
16 ed upon the journal of each House.

Sec. 12. *Clerks of Circuit Courts.* The voters of each
2 county shall elect a clerk of the circuit court, whose term
3 of office shall be six years. His duties and compensation and
4 the manner of removing him from office shall be prescribed
5 by law. He may be required by law to perform duties in
6 addition to those pertaining to his office as clerk of the cir-
7 cuit court. When a vacancy shall occur in the office, the
8 circuit court or the judge or judges thereof in vacation shall
9 fill the same by appointment until the next general election.
10 If the vacancy shall not be filled within ten days, then it shall
11 be filled by the Governor by appointment. In any case in
12 respect to which the clerk shall be so situated as to make it
13 improper for him to act, the said court shall appoint a clerk
14 to act therein. The clerks of said courts in office when this
15 article takes effect shall remain therein for the term for which
16 they were elected, unless sooner removed in the manner pre-
17 scribed by law.

Sec. 13. *Summary Courts.* The Legislature shall establish
2 in each county in the State a summary court. The Legislature
3 shall determine the number of judges to be elected for each
4 summary court and may provide for the election of one or

5 more judges to preside over the summary courts of two or
6 more contiguous counties. Each summary judge shall be
7 elected by the voters of the county or counties in which he
8 shall preside. Each of the judges so elected shall hold his
9 office for the term of four years, unless sooner removed in a
10 manner prescribed by this Constitution. No person shall be
11 entitled to hold the office of summary judge unless at the time
12 of his election and during his continuance in office he be a
13 resident of the county or of one of the counties for which he
14 is elected. The minimum age requirement for a judge of the
15 summary court shall be twenty-five years, but nothing herein
16 contained shall be construed as requiring that a summary
17 judge be a lawyer. A summary judge shall be commis-
18 sioned by the Governor, shall receive such salary, allowance
19 and mileage as may be fixed by law, which shall not be in-
20 creased or diminished during the term for which he shall have
21 been elected, and shall be paid, in the manner prescribed by
22 law, by the county or counties for which he shall have been
23 elected. Except as provided by law, no judge, during the term
24 of his office, shall practice the profession of law; nor, except as
25 provided by law, shall he hold any other office than that of

26 judge, or accept any appointment or public trust, under this
27 or any other government; nor shall he, during his continu-
28 ance in office, be eligible to any political office, or become a
29 candidate for any elective office or nomination thereto, except
30 a judicial office; and the violation of any of these provisions
31 shall vacate his office. A summary judge may be removed from
32 office by the Supreme Court of Appeals when from age, dis-
33 ease, mental or bodily infirmity, or intemperance, he is in-
34 capable of discharging the duties of his office. The procedure
35 for such removal shall be prescribed by law. Any judge against
36 whom a proceeding for removal from office is to be instituted
37 shall, prior thereto, receive reasonable notice of the cause, or
38 causes, alleged for such removal.

39 In those counties where there shall be more than one sum-
40 mary judge, the Legislature shall, until action is taken by
41 the Supreme Court of Appeals, make such provision for the
42 distribution, assignment and conduct of the business of such
43 court as shall promote and secure the convenient and ex-
44 pedient transaction thereof. A summary judge shall not
45 be absent from his official duties except as may be prescribed
46 by law. Provision shall be made by law for the conduct of

47 the business of a summary court in cases where it is im-
48 proper for a summary judge to act, or when he is absent,
49 or when, for any reason, he cannot exercise the jurisdiction
50 of such court, and for filling a vacancy in the office of sum-
51 mary judge.

52 The jurisdiction of a summary court shall extend through-
53 out the county, shall be uniform for all counties of the State,
54 and shall be subject to such regulations as to the venue of ac-
55 tions and the counties in which process may be executed or
56 served on parties or witnesses as may be established by law.
57 Times and places for holding such court may be regulated by
58 law, but, in the absence of such regulation, such court may
59 be held at any time and anywhere within the county.

60 Summary courts shall have such jurisdiction, original or
61 appellate, in criminal matters as may be prescribed by law.
62 In criminal cases, the procedure may be by information or
63 warrant of arrest, without presentment or indictment by a
64 grand jury. They shall have original jurisdiction in all
65 civil actions at law wherein the amount in controversy or the
66 value of personal property in controversy, or the aggregate
67 of such amount and value, exclusive of interest and costs,

68 shall not exceed five hundred dollars, except such actions as
69 may be excluded from their jurisdiction by law; and in ac-
70 tions of unlawful detainer of real estate when the title thereto
71 is not in controversy.

72 Appeals or writs of error shall lie from the judg-
73 ments of a summary court to the circuit court of the
74 county, and writs of error shall lie from the Supreme Court of
75 Appeals to judgments of a summary court, in such cases and
76 in such manner as may be prescribed by law.

77 No judgment of a summary court in any action involving
78 real estate or any right pertaining thereto shall bar the title
79 of any party or any remedy therefor; and no person shall be
80 put in jeopardy of life or liberty for a felony in such court.

81 A trial jury in a summary court shall consist of six jurors.

Sec. 14. *Municipal Courts.* The Legislature may provide
2 for the establishment in any incorporated city, town or vil-
3 lage of a municipal, police or mayor's court, which shall
4 have jurisdiction to enforce municipal ordinances, subject to
5 appeal to the circuit court. All such courts heretofore estab-
6 lished shall, until otherwise provided by law, remain as at
7 present constituted insofar as their jurisdiction to enforce

8 municipal ordinances is concerned, but any other jurisdic-
9 tion now exercised by such a court shall cease with the ex-
10 piration of the term of office of the judge thereof.

Sec. 15. *Jurisdiction and Terms of Office of Superseded*
2 *Courts, Judges and Justices; Transfer of Causes.* The terms
3 of office of all justices of the peace and constables, elected or
4 appointed, and qualified and serving at the time of the adop-
5 tion of this article, are hereby extended to and including the
6 thirty-first day of December, in the year one thousand nine
7 hundred forty-two. A vacancy appointment of a justice of
8 the peace or constable, made after this article is adopted, shall
9 terminate on the thirty-first day of December, in the year one
10 thousand nine hundred forty-two. No justice of the peace
11 shall hold office after the thirty-first day of December in
12 the year one thousand nine hundred and forty-two; nor shall
13 a judge of an inferior court of record of limited jurisdiction
14 elected to office in the year one thousand nine hundred and
15 forty hold office after the thirty-first day of December in the
16 year one thousand nine hundred and forty-four. Otherwise,
17 the adoption of this article shall not affect the term of office,
18 or the jurisdiction during such term, of a judge of any in-

19 ferior court of record of limited jurisdiction in office, or elected
20 to office, at the time when this article takes effect, or the juris-
21 diction of such court during such term of office; or the term
22 of office, or the jurisdiction during such term, of any justice
23 of the peace in office, or elected to office, at such time. All
24 actions, suits and proceedings pending in any inferior court
25 of record of limited jurisdiction in any county at the time
26 when the jurisdiction of such court shall cease with the expira-
27 tion of the term of office of the judge thereof shall be trans-
28 ferred to the circuit court of the county and be prosecuted
29 therein as if originally instituted in such circuit court. When-
30 ever the jurisdiction of any justice of the peace shall cease
31 with the expiration of his term of office, all matters then pend-
32 ing before him shall be transferred to the summary court of
33 the county, if it has jurisdiction thereof; otherwise, to the
34 circuit court of the county. After such transfer, such matters
35 shall be disposed of in the summary court or the circuit court
36 as if originally pending therein.

Sec. 16. *Issuance of Writs, Warrants, and Process; Ad-*
2 *mission to Bail.* The Legislature may designate courts, tri-
3 bunals or officers who shall have the power to issue such

4 writs, warrants and other process as may be prescribed by
5 law; may provide for the selection of other persons for the
6 purpose of exercising such powers; and may specify before
7 what courts, tribunals, officers, or persons such writs, war-
8 rants or other process shall be returnable. The Legislature
9 may also designate courts, tribunals, or officers who shall
10 have the power to admit persons to bail and may provide
11 for the selection of other persons for the purpose of exercis-
12 ing such power. The powers mentioned in this section shall
13 be exercised under such regulations as shall be prescribed by
14 law; but no person exercising such powers shall be compen-
15 sated therefor on a fee basis.

Sec. 17. *Parts of Common Law Effective; Matters Pend-*
2 *ing in Circuit Courts.* Such parts of the common law and
3 of the laws of this State as are in force when this article
4 goes into operation, and are not repugnant thereto, shall be
5 and continue the law of the State until altered or repealed
6 by the Legislature. All civil and criminal suits and proceed-
7 ings pending in the circuit courts of this State shall remain
8 and be prosecuted in the circuit courts of the counties in
9 which they are pending.

Sec. 18. *County Courts.* Except as otherwise provided in
2 this article, there shall be in each county in the State a
3 county court composed of three commissioners. Two of said
4 commissioners shall be a quorum for the transaction of busi-
5 ness. Four regular sessions of said court shall be held in
6 each year, at such times as may be fixed and entered of rec-
7 ord by the said court. Provision may be made by law for
8 holding special sessions of said court.

Sec. 19. *County Commissioners.* The commissioners shall
2 be elected by the voters of the county and shall hold their
3 office for the term of six years, except that, at the first meet-
4 ing of said commissioners, if all shall have been elected at
5 the same time, they shall designate by lot, or otherwise, in
6 such manner as they may determine, one of their number who
7 shall hold his office for the term of two years, one for four
8 years, and one for six years, so that one shall be elected
9 every two years. No two of said commissioners shall be
10 elected from the same magisterial district. If two or more
11 persons residing in the same district shall receive the greater
12 numbers of votes cast at any election, then only the one
13 of such persons receiving the highest number shall be de-

14 clared elected, and the person residing in another district
15 who shall receive the next highest number of votes shall be
16 declared elected. A commissioner in office at the time when
17 this article takes effect shall remain therein until the ex-
18 piration of his term of office, unless sooner removed in the
19 manner provided by this Constitution. Said commissioners
20 shall annually elect one of their number president. Each
21 commissioner shall receive such salary as may be prescribed
22 by law and no commissioner shall receive for his services,
23 other than such salary, any reward, compensation or benefit
24 out of public funds; nor shall he be interested in any con-
25 tract with the county.

Sec. 20. *Powers of County Courts.* The county courts,
2 through their clerks, except as may be otherwise provided by
3 law, shall have the custody of all deeds and other papers pre-
4 sented for record in their counties, and the same shall be
5 preserved therein, or otherwise disposed of, as prescribed by
6 law. They shall, under such regulations as may be pre-
7 scribed by law, have the superintendence and administra-
8 tion of the internal police and fiscal affairs of the county, in-
9 cluding, where such functions are not required by law to

10 be performed by some other agency, the establishment and
11 regulation of roads, ways, bridges, public landings, ferries
12 and mills, and shall have authority to lay and disburse
13 county levies; but no license for the sale of intoxicating
14 liquors in any incorporated city, town or village shall be
15 granted without the consent of the municipal authorities
16 thereof first had and obtained. They shall, in all cases of
17 contest, judge of the election, qualification and return of
18 their own members, and of all county and district officers,
19 subject to such regulations, by appeal or otherwise, as may be
20 prescribed by law. Such courts may exercise such other
21 powers, and perform such other duties, not of a judicial na-
22 ture, as may be prescribed by law. Such tribunals as have
23 been heretofore established by the Legislature and are now
24 in existence under and by virtue of the thirty-fourth section
25 of the eighth article of the Constitution of one thousand
26 eight hundred and seventy-two, for police and fiscal pur-
27 poses, shall, until otherwise provided by law, remain and
28 continue as at present constituted in the counties in which
29 they have been respectively established, and shall be and act
30 as to police and fiscal matters in lieu of the county court

31 created by this article until otherwise provided by law. And,
32 until otherwise provided by law, such clerk as is mentioned
33 in the twenty-second section of this article shall exercise any
34 powers and discharge any duties heretofore conferred on, or
35 required of, any court or tribunal established for judicial
36 purposes under said article and section of the Constitution
37 of one thousand eight hundred and seventy-two, or the clerk
38 of such court or tribunal, respectively, respecting the record-
39 ing and preservation of deeds and other papers presented for
40 record.

Sec. 21. *Jurisdiction in Matters of Probate, Etc.* Juris-
2 diction in all matters of probate, the appointment and
3 qualification of a personal representative, guardian, commit-
4 tee, or curator, and the settlement of their accounts, and in
5 the matter of apprentices, shall be in such courts or tribun-
6 als and the clerks thereof as may be prescribed by law, such
7 jurisdiction to be exercised by such courts, tribunals or
8 clerks, respectively, to the extent and in the manner to be
9 prescribed by law; but, until the Legislature shall provide
10 otherwise, jurisdiction in all such matters shall remain in
11 the county courts and the clerks thereof, under such regu-

12 lations as are now or may be hereafter prescribed by law.
13 Should jurisdiction in such matters be changed, provision
14 shall be made by law for the transfer of all such matters
15 then pending in the county courts to the courts or tribunals
16 to which such jurisdiction shall have been transferred, and
17 such disposition shall be made of records and papers in the
18 offices of clerks of the county courts relating to matters of
19 probate, the appointment and qualification of personal repre-
20 sentatives, guardians, committees, and curators and the set-
21 tlement of their accounts, and in the matter of apprentices,
22 as shall be prescribed by law.

Sec. 22. *Clerk of the County Court.* Except as otherwise
2 provided by law, the voters of each county shall elect a clerk
3 of the county court, whose term of office shall be six years.
4 His duties and compensation and the manner of his removal
5 from office shall be prescribed by law. The clerks of said
6 courts now in office shall remain therein for the terms for
7 which they have been elected, unless sooner removed there-
8 from in the manner prescribed by law.

Sec. 23. *Districting of Counties.* Each county shall be laid
2 off into districts, not less than three nor more than ten in

3 number, and as nearly equal as may be in territory and
4 population. The districts as they now exist shall remain un-
5 til changed by the county court.

Sec. 24. *Re-formation of County Courts.* The Legislature
2 shall, upon the application of any county, reform, alter or
3 modify the county court established by this article in such
4 county, and, in lieu thereof, with the assent of a majority of
5 the voters of such county voting at an election, create an-
6 other tribunal for the transaction of the business required
7 to be performed by the county court created by this article;
8 and in such case, all the provisions of this article in relation
9 to the county court shall be applicable to the tribunal estab-
10 lished in lieu of said court. Any such tribunal now estab-
11 lished, or which shall be established, shall continue to act in
12 lieu of the county court until otherwise provided by law.

Sec. 25. *Vacancies in Offices.* Vacancies in the office of
2 a commissioner and in the office of clerk of the county court
3 in any county shall be filled by the county court of the
4 county until the next general election. If there be at the
5 same time in the same county more than one vacancy in the
6 office of commissioner, such vacancies shall be filled by the

7 Governor by appointment until the next general election.

Sec. 26. *Office of Constable Abolished.* The provisions of section thirteen of article six and the provisions of sections two and seven of article nine of this Constitution, to the extent only that they provide for the office of constable, are hereby repealed after the thirty-first day of December in the year one thousand nine hundred and forty-two.

Sec. 2. *Amendment to be Known as the Judiciary Amendment.* For convenience in referring to said proposed amendment and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated and shall be known as the "Judiciary Amendment."

Sec. 3. *Form of Ballot; Election.* For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the general election to be held in the year one thousand nine hundred forty, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballot to be voted at said election, the following :

Ballot on constitutional "Judiciary Amendment" amending article eight of the state constitution.

10 ☐ For ratification of "Judiciary Amendment".

11 ☐ Against ratification of "Judiciary Amendment".

12 The election on the proposed amendment, at each place
13 of voting, shall be superintended, conducted and returned,
14 and the result thereof ascertained by the same officers and in
15 the same manner as the election of officers to be voted for at
16 said election; and all of the provisions of law relating to gen-
17 eral elections, including all duties to be performed by any
18 officer or board, as far as applicable and not inconsistent with
19 anything herein contained, shall apply to the election held
20 under the provisions of this act, except when it is herein
21 otherwise provided. The ballots cast on the question of said
22 proposed amendment shall be counted as other ballots cast at
23 said election.

 Sec. 4. *Certificates of Election Commissioners; Canvass of*
2 *vote; Certifying Result.* As soon as the result is ascertained
3 the commissioners, or a majority of them, and the canvassers
4 (if there be any), or a majority of them, at each place of
5 voting, shall make out and sign two certificates thereof in
6 the following form or to the following effect:

7 "We, the undersigned, who acted as commissioners (or

8 canvassers, as the case may be), of the election held at pre-
9 cinct number....., in the district of, in the
10 county of, on the..... day of November, one
11 thousand nine hundred forty, upon the question of the ratifi-
12 cation or rejection of the proposed constitutional amendment
13 to article eight, do hereby certify that the result of said elec-
14 tion is as follows:

15 Amending article eight:

16 For ratification of "Judiciary Amendment".....votes

17 Against ratification of "Judiciary Amendment".....votes

18 Given under our hands this day of November, one
19 thousand nine hundred forty."

20 The said two certificates shall correspond with each other
21 in all respects, and contain the full and true returns of said
22 election at each place of voting on said question. The said
23 commissioners, or any one of them (or said canvassers, or
24 any one of them, as the case may be), shall within four days,
25 excluding Sunday, after that on which said election was
26 held, deliver one of said certificates to the clerk of the coun-
27 ty court of his county, together with the ballots, and the
28 other to the clerk of the circuit court of his county.

29 The said certificates, together with the ballots cast on the
30 question of said proposed amendment, shall be laid before
31 the commissioners of the county court at the courthouse at
32 the same time the ballots, poll books and the certificates
33 of the election for the members of the Legislature are laid be-
34 fore them; and as soon as the result of said election in the
35 county upon the question of such ratification or rejection is
36 ascertained, two certificates of such result shall be made out
37 and signed by said commissioners, as a board of canvassers,
38 in the following form or to the following effect:

39 "We, the board of canvassers of the county of.....,
40 having carefully and impartially examined the returns of the
41 election held in said county, in each district thereof, on the
42 day of November, one thousand nine hundred forty, do
43 certify that the result of the election in said county, on the
44 question of the ratification or rejection of the proposed con-
45 stitutional amendment to article eight, is as follows:

46 For ratification of "Judiciary Amendment".....votes.

47 Against ratification of "Judiciary Amendment".....votes.

48 Given under our hands this.....day of....., one
49 thousand nine hundred forty."

50 One of the certificates shall be filed in the office of the
51 clerk of the county court, and the other forwarded by mail
52 to the secretary of state, who shall file and preserve the same
53 until the day on which the result of said election in the state
54 is to be ascertained, as hereinafter stated.

Sec. 5. *Proclamation of Result of Election by Governor.*

2 On the twenty-fifth day after the election is held, or as soon
3 thereafter as practicable, the said certificates shall be laid be-
4 fore the Governor, whose duty it shall be to ascertain there-
5 from the result of said election in the state, and declare the
6 same by proclamation published in one or more newspapers
7 printed at the seat of government. If a majority of the votes
8 cast at said election upon said question be for the ratification
9 of the said amendment, the proposed amendment so ratified
10 shall be of force and effect from and after the time of such
11 ratification as part of the constitution of the state.

Sec. 6. *Publication of Proposed Amendment by Governor.*

2 The Governor shall cause the said proposed amendment, with
3 the proper designation for the same as hereinbefore adopted,
4 to be published one time, at least three months before such
5 election, in some newspaper in every county in this state in

6 which a newspaper is printed, at a price to be agreed upon
7 in advance in writing, and the cost of such advertising shall
8 in the first instance, if found necessary by him, be paid out
9 of the Governor's contingent fund and be afterwards repaid
10 to such fund by appropriation of the Legislature.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. O. Wiseman

Chairman Senate Committee

Dee B. Walter

Chairman House Committee

Originated in the

House of Delegates

Takes effect

ninety days from passage.

Phonetic

Clerk of the Senate

Wm. S. Stace

Clerk of the House of Delegates

Wm. S. Stace

President of the Senate

James L. Thomas

Speaker House of Delegates

The within *approved* this the *16th*

day of *March*, 1939.

Samuel H.

Governor.



Filed in the office of the Secretary of State
of West Virginia. **MAR 17 1939**

Wm. S. O'BRIEN,
Secretary of State