

House Concurrent Resolution No. 5002

By Committee on Judiciary

1-16

HCR5002-Balloon-Revisor
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1 A PROPOSITION to amend the constitution of the state of Kansas by
2 revising article 3 thereof, relating to the judiciary.

3
4 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
5 *members elected (or appointed) and qualified to the House of*
6 *Representatives and two-thirds of the members elected (or appointed)*
7 *and qualified to the Senate concurring therein:*

8 Section 1. The following proposition to amend the constitution of
9 the state of Kansas shall be submitted to the qualified electors of the state
10 for their approval or rejection: Article 3 of the constitution of the state of
11 Kansas is hereby amended to read as follows:

"Article 3.—JUDICIAL

12
13 **"§ 1. Judicial power; seals; rules.** The judicial power of
14 this state shall be vested exclusively in one court of justice,
15 which shall be divided into one supreme court, one court of
16 appeals, district courts, and such other courts as are provided by
17 law; and all courts of record shall have a seal. The supreme
18 court shall have general administrative authority over all courts
19 in this state.

20 **"§ 2. Supreme court.** The supreme court shall consist of
21 not less than seven justices who shall be selected as provided by
22 this article. All cases shall be heard with not fewer than four
23 justices sitting and the concurrence of a majority of the justices
24 sitting and of not fewer than four justices shall be necessary for
25 a decision. The term of office of the justices shall be six years
26 except as hereinafter provided. The justice who is senior in
27 continuous term of service shall be chief justice, and in case two
28 or more have continuously served during the same period the
29 senior in age of these shall be chief justice. A justice may
30 decline or resign from the office of chief justice without
31 resigning from the court. Upon such declination or resignation,
32 the justice who is next senior in continuous term of service shall
33 become chief justice. During incapacity of a chief justice, the
34 duties, powers and emoluments of the office shall devolve upon
35 the justice who is next senior in continuous service.

36 **"§ 3. Jurisdiction and terms.** The supreme court shall

Explanation:
This amendment corrects drafting errors on pages 4 and 6.
It also adds a jurisdiction provision for the court of appeals
to section 6, on page 6.

1 have original jurisdiction in proceedings in quo warranto,
2 mandamus, and habeas corpus; and such appellate jurisdiction
3 as may be provided by law. It shall hold one term each year at
4 the seat of government and such other terms at such places as
5 may be provided by law, and its jurisdiction shall be co-
6 extensive with the state.

7 **"§ 4. Reporter; clerk.** There shall be appointed, by the
8 justices of the supreme court, a reporter and clerk of such court,
9 who shall hold their offices two years, and whose duties shall be
10 prescribed by law.

11 **"§ 5. Selection of justices of the supreme court.** (a) (1)
12 Any vacancy occurring in the office of any justice of the
13 supreme court and any position to be open on the supreme court
14 as a result of enlargement of such court, or the retirement or
15 failure of an incumbent to file such justice's declaration of
16 candidacy to be retained in office as hereinafter required, or
17 failure of a justice to be elected to be retained in office, shall be
18 filled by appointment by the governor, with the consent of the
19 senate, of a person possessing the qualifications of office.

20 (2) Whenever a vacancy occurs, will occur or position
21 opens on the supreme court, the clerk of the supreme court shall
22 promptly give notice to the governor.

23 (3) In event of the failure of the governor to make the
24 appointment within 60 days from the date such vacancy
25 occurred or position became open, the chief justice of the
26 supreme court, with the consent of the senate, shall make the
27 appointment of a person possessing the qualifications of office.

28 (4) Whenever a vacancy in the office of justice of the
29 supreme court exists at the time the appointment to fill such
30 vacancy is made pursuant to this section, the appointment shall
31 be effective at the time it is made, but where an appointment is
32 made pursuant to this section to fill a vacancy which will occur
33 at a future date, such appointment shall not take effect until
34 such date.

35 (b) No person appointed pursuant to subsection (a) shall
36 assume the office of justice of the supreme court until the
37 senate, by an affirmative vote of the majority of all members of
38 the senate then elected or appointed and qualified, consents to
39 such appointment. The senate shall vote to consent to any such
40 appointment not later than 60 days after such appointment is
41 received by the senate. If the senate is not in session and will
42 not be in session within the 60-day time limitation, the senate
43 shall vote to consent to any such appointment not later than 20

1 days after the senate begins its next session. In the event a
2 majority of the senate does not vote to consent to the
3 appointment, the governor, within 60 days after the senate vote
4 on the previous appointee, shall appoint another person
5 possessing the qualifications of office and such subsequent
6 appointment shall be considered by the senate in the same
7 procedure as provided in this article. The same appointment and
8 consent procedure shall be followed until a valid appointment
9 has been made. No person who has been previously appointed
10 but did not receive the consent of the senate shall be appointed
11 again for the same vacancy. If the senate fails to vote on an
12 appointment within the time limitation imposed by this
13 subsection, the senate shall be deemed to have given consent to
14 such appointment.

15 (c) (1) Each justice of the supreme court appointed
16 pursuant to subsection (a) and consented to pursuant to
17 subsection (b) shall hold office for an initial term ending on the
18 second Monday in January following the first general election
19 that occurs after the expiration of 12 months in office.

20 (2) Not less than 60 days prior to the holding of the general
21 election next preceding the expiration of the term of any justice
22 of the supreme court, the justice may file in the office of the
23 secretary of state a declaration of candidacy for retention in
24 office. If a declaration is not filed as provided in this section,
25 the position held by the justice shall be vacant upon the
26 expiration of the justice's term of office. If such declaration is
27 filed, the justice's name shall be submitted at the next general
28 election to the electors of the state on a separate judicial ballot,
29 without party designation, reading substantially as follows:

30 "Shall (Here insert name of justice.), Justice of the Supreme
31 Court, be retained in office?"

32 (3) If a majority of those voting on the question vote
33 against retaining the justice in office, the position which the
34 justice holds shall be vacant upon the expiration of the justice's
35 term of office. Otherwise, unless the justice is removed for
36 cause, the justice shall remain in office for the regular term of
37 six years from the second Monday in January following the
38 election. At the expiration of each term, unless by law the
39 justice is compelled to retire, the justice shall be eligible for
40 retention in office by election in the manner prescribed in this
41 section.

42 (4) If a majority of those voting on the question vote
43 against the justice's retention, the secretary of state, following

1 the final canvass of votes on the question, shall certify the
 2 results to the clerk of the supreme court. Any such justice who
 3 has not been retained in office pursuant to this section shall not
 4 be eligible for ~~nomination or~~ appointment to the office of justice
 5 of the supreme court prior to the expiration of six years after the
 6 expiration of the justice's term of office.

Strike

7 **"§ 6. Court of appeals.** (a) (1) The court of appeals shall
 8 consist of 14 judges whose positions shall be numbered one to
 9 14. Any vacancy occurring in the office of any judge of the
 10 court of appeals and any position to be open on the court of
 11 appeals as a result of enlargement of such court, or the
 12 retirement or failure of an incumbent to file such judge's
 13 declaration of candidacy to be retained in office as hereinafter
 14 required, or failure of a judge to be elected to be retained in
 15 office, shall be filled by appointment by the governor, with the
 16 consent of the senate, of a person possessing the qualifications
 17 of office.

18 (2) Whenever a vacancy occurs, will occur or position
 19 opens on the court of appeals, the clerk of the supreme court
 20 shall promptly give notice to the governor.

21 (3) In event of the failure of the governor to make the
 22 appointment within 60 days from the date such vacancy
 23 occurred or position became open, the chief justice of the
 24 supreme court, with the consent of the senate, shall make the
 25 appointment of a person possessing the qualifications of office.

26 (4) Whenever a vacancy in the office of judge of the court
 27 of appeals exists at the time the appointment to fill such
 28 vacancy is made pursuant to this section, the appointment shall
 29 be effective at the time it is made, but where an appointment is
 30 made pursuant to this section to fill a vacancy which will occur
 31 at a future date, such appointment shall not take effect until
 32 such date.

33 (b) No person appointed pursuant to subsection (a) shall
 34 assume the office of judge of the court of appeals until the
 35 senate, by an affirmative vote of the majority of all members of
 36 the senate then elected or appointed and qualified, consents to
 37 such appointment. The senate shall vote to consent to any such
 38 appointment not later than 60 days after such appointment is
 39 received by the senate. If the senate is not in session and will
 40 not be in session within the 60-day time limitation, the senate
 41 shall vote to consent to any such appointment not later than 20
 42 days after the senate begins its next session. In the event a
 43 majority of the senate does not vote to consent to the

(Note: Language taken from K.S.A. 20-3001)
 The court of appeals shall be a part of the court of justice
 in which the judicial power of the state is vested by section
 1 of this article and shall be subject to the general
 administrative authority of the supreme court. The court of
 appeals shall have such jurisdiction over appeals in civil
 and criminal cases and from administrative bodies and
 officers of the state as may be prescribed by law, and shall
 have such original jurisdiction as may be necessary to the
 complete determination of any cause on review. During
 the pendency of any appeal, the court of appeals, on such
 terms as may be just, may make an order suspending
 further proceedings in the court below, until the decision
 of the court of appeals.
 (2)
 Redesignate subsections accordingly

1 appointment, the governor, within 60 days after the senate vote
2 on the previous appointee, shall appoint another person
3 possessing the qualifications of office and such subsequent
4 appointment shall be considered by the senate in the same
5 procedure as provided in this article. The same appointment and
6 consent procedure shall be followed until a valid appointment
7 has been made. No person who has been previously appointed
8 but did not receive the consent of the senate shall be appointed
9 again for the same vacancy. If the senate fails to vote on an
10 appointment within the time limitation imposed by this
11 subsection, the senate shall be deemed to have given consent to
12 such appointment.

13 (c) (1) Each judge of the court of appeals appointed
14 pursuant to subsection (a) and consented to pursuant to
15 subsection (b) shall hold office for an initial term ending on the
16 second Monday in January following the first general election
17 that occurs after the expiration of 12 months in office.

18 (2) Not less than 60 days prior to the holding of the general
19 election next preceding the expiration of the term of any judge
20 of the court of appeals, the judge may file in the office of the
21 secretary of state a declaration of candidacy for retention in
22 office. If a declaration is not filed as provided in this section,
23 the position held by the judge shall be vacant upon the
24 expiration of the judge's term of office. If such declaration is
25 filed, the judge's name shall be submitted at the next general
26 election to the electors of the state on a separate judicial ballot,
27 without party designation, reading substantially as follows:

28 "Shall (Here insert name of judge.), Judge of the Court of
29 Appeals, be retained in office?"

30 (3) If a majority of those voting on the question vote
31 against retaining the judge in office, the position which the
32 judge holds shall be vacant upon the expiration of the judge's
33 term of office. Otherwise, unless the judge is removed for
34 cause, the judge shall remain in office for the regular term of
35 four years from the second Monday in January following the
36 election. At the expiration of each term, unless by law the judge
37 is compelled to retire, the judge shall be eligible for retention in
38 office by election in the manner prescribed in this section.

39 (4) If a majority of those voting on the question vote
40 against the judge's retention, the secretary of state, following the
41 final canvass of votes on the question, shall certify the results to
42 the clerk of the supreme court. Any such judge who has not
43 been retained in office pursuant to this section shall not be

1 eligible for ~~nomination or~~ appointment to the office of judge of
2 the court of appeals prior to the expiration of four years after the
3 expiration of the judge's term of office.

Strike

4 (d) The supreme court may assign a judge of the court of
5 appeals to serve temporarily on the supreme court.

6 ~~(e) The supreme court or the court of appeals may assign a~~
7 ~~district judge to serve temporarily on the court of appeals.~~

Strike

8 **"§ 7. District courts.** (a) The state shall be divided into
9 judicial districts as provided by law. Each judicial district shall
10 have at least one district judge. The term of office of each judge
11 of the district court shall be four years. District court shall be
12 held at such times and places as may be provided by law. The
13 district judges shall be elected by the electors of the respective
14 judicial districts unless the electors of a judicial district have
15 adopted and not subsequently rejected a method of nonpartisan
16 selection. The legislature shall provide a method of nonpartisan
17 selection of district judges and for the manner of submission
18 and resubmission thereof to the electors of a judicial district. A
19 nonpartisan method of selection of district judges may be
20 adopted, and once adopted may be rejected, only by a majority
21 of electors of a judicial district voting on the question at an
22 election in which the proposition is submitted. Whenever a
23 vacancy occurs in the office of district judge, it shall be filled
24 by appointment by the governor until the next general election
25 that occurs more than 30 days after such vacancy, or as may be
26 provided by such nonpartisan method of selection.

27 (b) The district courts shall have such jurisdiction in their
28 respective districts as may be provided by law.

29 (c) The legislature shall provide for clerks of the district
30 courts.

31 (d) Provision may be made by law for judges pro tem of
32 the district court.

33 (e) The supreme court or any justice thereof shall have the
34 power to assign judges of district courts temporarily to other
35 districts.

36 (f) The supreme court may assign a district judge to serve
37 temporarily on the supreme court.

38 (g) The supreme court or the court of appeals may assign a
39 district judge to serve temporarily on the court of appeals.

40 **"§ 8. Qualifications of justices and judges.** Justices of
41 the supreme court, judges of the court of appeals and judges of
42 the district courts shall be at least 30 years of age and shall be
43 duly authorized by the supreme court of Kansas to practice law

1 in the courts of this state and shall possess such other
2 qualifications as may be prescribed by law.

3 **"§ 9. Prohibition of political activity by justices and**
4 **certain judges.** No justice of the supreme court who is
5 appointed or retained under the procedure of section 5 of this
6 article, nor any judge of the court of appeals who is appointed
7 or retained under the procedure of section 6 of this article, nor
8 any judge of the district court holding office under a
9 nonpartisan method authorized in subsection (a) of section 7 of
10 this article, shall directly or indirectly make any contribution to
11 or hold any office in a political party or organization or take
12 part in any political campaign.

13 **"§ 10. Extension of terms until successor qualified.** All
14 judicial officers shall hold their offices until their successors
15 shall have qualified.

16 **"§ 11. Compensation of justices and judges; certain**
17 **limitation.** The justices of the supreme court, judges of the
18 court of appeals and judges of the district courts shall receive
19 for their services such compensation as may be provided by
20 law, which shall not be diminished during their terms of office,
21 unless by general law applicable to all salaried officers of the
22 state. Such justices or judges shall receive no fees or perquisites
23 nor hold any other office of profit or trust under the authority of
24 the state, or the United States except as may be provided by law,
25 or practice law during their continuance in office.

26 **"§ 12. Removal of justices and judges.** Justices of the
27 supreme court may be removed from office by impeachment
28 and conviction as prescribed in article 2 of this constitution. In
29 addition to removal by impeachment and conviction, justices
30 may be retired after appropriate hearing, upon certification to
31 the governor, by the supreme court that such justice is so
32 incapacitated as to be unable to perform adequately such
33 justice's duties. Other judges shall be subject to retirement for
34 incapacity, and to discipline, suspension and removal for cause
35 by the supreme court after appropriate hearing.

36 **"§ 13. Savings clause.** Nothing contained in this
37 amendment to the constitution shall: (a) Shorten the term of
38 office or abolish the office of any justice of the supreme court,
39 any judge of the court of appeals, any judge of the district court,
40 or any other judge of any other court who is holding office at
41 the time this amendment becomes effective, or who is holding
42 office at the time of adoption, rejection, or resubmission of a
43 nonpartisan method of selection of district judges as provided in

1 subsection (a) of section 7 of this article, and all such justices
2 and judges shall hold their respective offices for the terms for
3 which elected or appointed unless sooner removed in the
4 manner provided by law; (b) repeal any statute of this state
5 relating to the supreme court, the supreme court nominating
6 commission, the court of appeals, district courts, or any other
7 court, or relating to the justices or judges of such courts, and
8 such statutes shall remain in force and effect until amended or
9 repealed by the legislature."

10 Sec. 2. The following statement shall be printed on the ballot with
11 the amendment as a whole:

12 "*Explanatory statement.* The purpose of this amendment is to
13 place the law concerning the court of appeals into the
14 constitution and to do away with the supreme court
15 nominating commission. The governor will appoint a
16 qualified person, or if the governor fails to act, the chief
17 justice of the supreme court would appoint a qualified
18 person, and such person's appointment would be required to
19 be confirmed by the senate. A procedure is established
20 whereby senate confirmation would occur within 60 days of
21 receiving the appointment. If the senate does not confirm the
22 appointment a majority vote, the governor would then
23 appoint another qualified person, and such person's
24 appointment would again go to the senate for confirmation.
25 The same appointment and confirmation procedure would be
26 followed until a valid appointment is made. If the senate
27 fails to vote on an appointment within 60 days, it will be
28 considered that the senate has confirmed the appointment.

29 "A vote for this proposition would provide a procedure whereby
30 the governor or chief justice would appoint a person to be a
31 supreme court justice or court of appeals judge and the
32 senate, by majority vote, would confirm the appointment of
33 the supreme court justice or court of appeals judge.

34 "A vote against this proposition would continue in effect the
35 current provision whereby the supreme court nominating
36 commission nominates three persons for the office of the
37 supreme court or court of appeals and the governor appoints
38 one of such persons."

39 Sec. 3. This resolution, if approved by two-thirds of the members
40 elected (or appointed) and qualified to the House of Representatives, and
41 two-thirds of the members elected (or appointed) and qualified to the
42 Senate shall be entered on the journals, together with the yeas and nays.
43 The secretary of state shall cause this resolution to be published as

1 provided by law and shall cause the proposed amendment to be submitted
2 to the electors of the state at the election in August in the year 2014
3 unless a special election is called at a sooner date by concurrent
4 resolution of the legislature, in which case it shall be submitted to the
5 electors of the state at the special election.