

HOUSE BILL No. 2770

By Representative Kinzer

1-31

9 AN ACT concerning the courts; relating to the court of appeals; appoint-
10 ment of judges; amending K.S.A. 20-3010 and K.S.A. 2005 Supp. 20-
11 3002 and 20-3006 and repealing the existing sections; also repealing
12 K.S.A. 20-3007, 20-3008 and 20-3009 and K.S.A. 2005 Supp. 20-3004
13 and 20-3005.
14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) Any vacancy occurring in the office of any judge
17 of the court of appeals and any position to be open on the court of appeals
18 as a result of enlargement of such court pursuant to K.S.A. 20-3002, and
19 amendments thereto, or the retirement or failure of an incumbent to file
20 such judge's declaration of candidacy to be retained in office pursuant to
21 K.S.A. 20-3006, and amendments thereto, or failure of a judge to be
22 elected to be retained in office, shall be filled by appointment by the
23 governor, with the consent of the senate.

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

28 (c) Whenever a vacancy occurs, will occur or position opens on the
29 court of appeals, the clerk of the supreme court shall promptly give notice
30 to the governor.

31 (d) No person appointed pursuant to subsection (a) or (b) shall as-
32 sume the office of judge of the court of appeals until the senate, by an
33 affirmative vote of the majority of all members of the senate then elected
34 or appointed and qualified, consents to such appointment. The senate
35 shall vote to consent to any such appointment not later than 30 days after
36 such appointment is received by the senate. If the senate is not in session
37 and will not be in session within the 30-day time limitation, the president
38 of the senate shall convene the senate for the sole purpose of voting on
39 such appointment and no other action shall be in order during such ses-
40 sion. In the event a majority of the senate does not vote to consent to the
41 appointment, the governor, within 30 days after the senate vote on the
42 previous appointee, shall appoint another person possessing the qualifi-
43 cations of office and such subsequent appointment shall be considered

1 by the senate in the same procedure as provided in this section. The same
2 appointment and consent procedure shall be followed until a valid ap-
3 pointment has been made. No person who has been previously appointed
4 but did not receive the consent of the senate shall be appointed again for
5 the same vacancy. If the senate fails to vote on an appointment within
6 the 30-day time limitation, the senate shall be deemed to have given
7 consent to such appointment.

8 Sec. 2. K.S.A. 2005 Supp. 20-3002 is hereby amended to read as
9 follows: 20-3002. (a) ~~On and after January 1, 2003, through December~~
10 ~~31, 2004, the court of appeals shall consist of 11 judges whose positions~~
11 ~~shall be numbered one to 11.~~ On and after January 1, 2005, through
12 December 31, 2006, the court of appeals shall consist of 12 judges whose
13 positions shall be numbered one to 12. On and after January 1, 2007,
14 through December 31, 2007, the court of appeals shall consist of 13
15 judges whose positions shall be numbered one to 13. On and after January
16 1, 2008, the court of appeals shall consist of 14 judges whose positions
17 shall be numbered one to 14. Judges of the court of appeals shall possess
18 the qualifications prescribed by law for justices of the supreme court.

19 (b) Judges of the court of appeals shall be ~~selected~~ *appointed* in the
20 manner provided by ~~K.S.A. 20-3003 through 20-3010~~ *section 1*, and
21 amendments thereto. Each judge of the court of appeals shall receive an
22 annual salary in the amount prescribed by law. No judge of the court of
23 appeals may receive additional compensation for official services per-
24 formed by the judge. Each such judge shall be reimbursed for expenses
25 incurred in the performance of such judge's official duties in the same
26 manner and to the same extent justices of the supreme court are reim-
27 bursed for such expenses.

28 (c) The supreme court may assign a judge of the court of appeals to
29 serve temporarily on the supreme court.

30 (d) Any additional court of appeals judge position created by this
31 section shall be considered a position created by the supreme court and
32 not a civil appointment to a state office pursuant to K.S.A. 46-234, and
33 amendments thereto.

34 Sec. 3. K.S.A. 2005 Supp. 20-3006 is hereby amended to read as
35 follows: 20-3006. (a) Persons who are appointed as judges of the court of
36 appeals pursuant to ~~K.S.A. 20-3005~~ *section 1*, and amendments thereto,
37 shall commence the duties of office upon appointment, and each judge
38 shall have all the rights, privileges, powers and duties prescribed by law
39 for the office of judge of the court of appeals.

40 (b) (1) Not less than 60 days prior to the holding of the general elec-
41 tion next preceding the expiration of the term of any judge of the court
42 of appeals, the judge may file in the office of the secretary of state a
43 declaration of candidacy for retention in office. If a declaration is not filed

1 as provided in this section, the position held by the judge shall be vacant
 2 upon the expiration of the judge's term of office. If such declaration is
 3 filed, the judge's name shall be submitted at the next general election to
 4 the electors of the state on a separate judicial ballot, without party des-
 5 ignation, reading substantially as follows:

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

8 (2) If a majority of those voting on the question votes against retaining
 9 the judge in office, the position which the judge holds shall be vacant
 10 upon the expiration of the judge's term of office. Otherwise, unless the
 11 judge is removed for cause, the judge shall remain in office for a term of
 12 four years from the second Monday in January following the election. At
 13 the expiration of each term, unless by law the judge is compelled to retire,
 14 the judge shall be eligible for retention in office by election in the manner
 15 prescribed in this section.

16 (3) If a majority of those voting on the question votes against the
 17 judge's retention, the secretary of state, following the final canvass of votes
 18 on the question, shall certify the results to the clerk of the supreme court.
 19 Any such judge who has not been retained in office pursuant to this
 20 section shall not be eligible for nomination or appointment to the office
 21 of judge of the court of appeals prior to the expiration of four years after
 22 the expiration of the judge's term of office.

23 (4) Election laws applicable to the general election of other state of-
 24 ficers shall apply to elections upon the question of retention of judges of
 25 the court of appeals pursuant to this section, to the extent that they are
 26 not in conflict with and are consistent with the provisions of this act.

27 Sec. 4. K.S.A. 20-3010 is hereby amended to read as follows: 20-
 28 3010. Any person appointed to the office of judge of the court of appeals
 29 pursuant to ~~K.S.A. 20-3009 section 1, and amendments thereto~~, shall com-
 30 mence upon the duties of ~~his or her~~ *such judge's* office on the date such
 31 appointment takes effect, ~~and~~. Any person so appointed shall have all the
 32 rights, privileges, powers and duties prescribed by law for the office of
 33 judge of the court of appeals. Any such judge who is so appointed to fill
 34 a vacancy or appointed by reason of the expiration of a term of office,
 35 shall serve until the second Monday in January following the next general
 36 election which occurs after one year in office and shall be eligible to
 37 ~~succeed himself or herself~~ *be retained* in office for a full term of four (4)
 38 years as provided in K.S.A. 20-3006, *and amendments thereto*, for the
 39 retention of judges first appointed to the court of appeals.

40 If a majority of the votes cast and counted at such election is in favor
 41 of retaining such judge in office, ~~he or she~~ *the judge* shall remain in office
 42 for a regular term of four years from the second Monday in January next
 43 following such election. Thereafter, such judge shall be subject to reten-

1 tion in office as provided in K.S.A. 20-3006, *and amendments thereto*. If
2 a majority of the votes cast and counted at such election is against retain-
3 ing such judge in office, such judge's position on the court of appeals shall
4 become vacant on the second Monday in January next following the elec-
5 tion, and a successor shall be appointed pursuant to ~~K.S.A. 20-3007, 20-~~
6 ~~3008 and 20-3009 section 1, and amendments thereto~~. If such judge does
7 not declare ~~his or her~~ *such judge's* candidacy for election to ~~succeed him-~~
8 ~~self or herself~~ *be retained* in office, such judge's position on the court of
9 appeals shall be vacant on the second Monday in January next following
10 such election.

11 Sec. 5. K.S.A. 20-3007, 20-3008, 20-3009 and 20-3010 and K.S.A.
12 2005 Supp. 20-3002, 20-3004, 20-3005 and 20-3006 are hereby repealed.

13 Sec. 6. This act shall take effect and be in force from and after its
14 publication in the statute book.