

As Amended by House Committee

Session of 2008

HOUSE BILL No. 2799

By Representatives Kinzer, Beamer, Brown, Brunk, Carlson, Crum, Donohoe, Faber, Fund, Goico, Grange, Kelley, Kelsey, Landwehr, Mast, Masterson, Merrick, Judy Morrison, Olson, Otto, Powers, Watkins and B. Wolf

2-8

13 AN ACT concerning the courts; creating the court of appeals nominating
14 commission; appointment of judges; amending K.S.A. 20-3002, 20-
15 3004, 20-3005, 20-3006, 20-3007 and 20-3010 and repealing the exist-
16 ing sections; also repealing K.S.A. 20-3008 and 20-3009.
17

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

19 New Section 1. (a) There is hereby established a court of appeals
20 nominating commission.

21 (b) The court of appeals nominating commission shall be composed
22 of the following members: Three members appointed by the speaker of
23 the house of representatives, three members appointed by the president
24 of the senate and three members appointed by the governor. One such
25 member from each of the three appointing authorities shall be a member
26 of the bar who resides and is licensed in Kansas.

27 (c) No member of the court of appeals nominating commission, while
28 a member, shall hold any other public office by appointment or any of-
29 ficial position in a political party or for six months thereafter be eligible
30 for appointment for the office of judge of the court of appeals.

31 (d) Except as provided by section 2, and amendments thereto, for
32 the initial selections, each member shall hold office for a term of four
33 years. Each member shall serve until a successor is appointed and certi-
34 fied to the clerk of the supreme court.

35 (e) Any member of the commission shall be eligible for reappoint-
36 ment if otherwise qualified.

37 (f) The chairperson shall be selected by the members of the com-
38 mission at the first meeting of the commission and shall serve for a term
39 of two years.

40 (g) Each member of the commission shall receive as compensation
41 for services \$15 each day of attendance at meetings of the commission
42 and shall be reimbursed for subsistence allowances, mileage and other
43 expenses in connection with meetings.

1 New Sec. 2. (a) For the initial appointments by the governor, one
2 member shall serve for a term of three years, one member shall serve for
3 a term of two years, and one member shall serve for a term of one year.
4 The designation of which member to each term shall be at the discretion
5 of the governor.

6 (b) For the initial appointments by the speaker of the house of rep-
7 resentatives, one member shall serve for a term of three years, one mem-
8 ber shall serve for a term of two years and one member shall serve for a
9 term of one year. The designation of which member to each term shall
10 be at the discretion of the speaker.

11 (c) For the initial appointments by the president of the senate, one
12 member shall serve for a term of three years, one member shall serve for
13 a term of two years, and one member shall serve for a term of one year.
14 The designation of which member to each term shall be at the discretion
15 of the president.

16 (d) The names of such appointees shall be certified by the appointing
17 authority to the clerk of the supreme court before their terms of office
18 begin. Any vacancy occurring among the members of the court of appeals
19 nominating commission shall be filled by appointment by the appointing
20 authority within 10 days after notice of such vacancy, for the unexpired
21 term of the member whose place is being filled, and the name of such
22 appointee shall be certified to the clerk.

23 New Sec. 3. (a) When the members of the court of appeals nomi-
24 nating commission have been appointed and certified to the clerk of the
25 supreme court as provided in sections 1 and 2, and amendments thereto,
26 the clerk shall make a record thereof in the clerk's office and shall notify
27 the members of the commission of their appointment.

28 (b) The commission shall meet from time to time as may be necessary
29 to discharge the responsibilities of the commission. Such meetings shall
30 be held at such place as the clerk of the supreme court may arrange. Such
31 meeting shall be held upon the call of the chairperson, or in the event of
32 the chairperson's failure to call a meeting when a meeting is necessary,
33 upon the call of any four members of the commission. The commission
34 shall act only at a meeting, and may act only by the concurrence of a
35 majority of its members. For the purposes of this act, the commission
36 shall not be subject to the Kansas open meetings act as provided in K.S.A.
37 75-4317 et seq., and amendments thereto.

38 (c) The commission shall have power to adopt such reasonable and
39 proper rules and regulations for the conduct of its proceedings and the
40 discharge of its duties as are consistent with this act.

41 New Sec. 4. (a) The clerk of the supreme court is hereby authorized
42 to procure such supplies and equipment as may be necessary to carry out
43 the provisions of this act.

1 (b) The compensation and expenses of the court of appeals nomi-
2 nating commission, the compensation of the clerk, and clerk's expenses
3 for supplies, equipment, and clerical and other assistance necessary to
4 carry out the provisions of this act, including official hospitality and any
5 expenses and clerical assistance necessary to perform the clerk's duties
6 with respect to the nonpartisan selection of judges, shall be paid from
7 available funds. The director of accounts and reports is hereby authorized
8 to draw warrants for the use and purposes specified in this section upon
9 the presentation of vouchers duly itemized and approved by the clerk of
10 the supreme court.

11 New Sec. 5. (a) Any vacancy occurring in the office of any judge of
12 the court of appeals and any position to be open on the court of appeals
13 as a result of enlargement of such court pursuant to K.S.A. 20-3002, and
14 amendments thereto, or the retirement or failure of an incumbent to file
15 such judge's declaration of candidacy to be retained in office pursuant to
16 K.S.A. 20-3006, and amendments thereto, or failure of a judge to be
17 elected to be retained in office, shall be filled by appointment by the
18 governor, ~~with the consent of the senate~~ **subject to confirmation by**
19 **the senate as provided in K.S.A. 75-4315b, and amendments**
20 **thereto.** The governor may appoint one of the nominees of the court of
21 appeals nominating commission or any person possessing the qualifica-
22 tions of office.

23 (b) In event of the failure of the governor to make the appointment
24 within 90 days from the date such vacancy occurred or position became
25 open, the chief justice of the supreme court, ~~with the consent of the~~
26 ~~senate~~ **subject to confirmation by the senate as provided in K.S.A.**
27 **75-4315b, and amendments thereto,** 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~~ **exercise any powers, duties or functions** of the office of judge
33 of the court of appeals until ~~the senate, by an affirmative vote of the~~
34 ~~majority of all members of the senate then elected or appointed and~~
35 ~~qualified, consents to such appointment~~ **confirmed by the senate as**
36 **provided in K.S.A. 75-4315b, and amendments thereto.** The senate
37 shall vote ~~to consent to any~~ **on the confirmation of** such appointment
38 not later than 30 days after such appointment is received by the senate.
39 ~~If the senate is not in session and will not be in session within the 30-day~~
40 ~~time limitation, the president of the senate shall convene the senate for~~
41 ~~the sole purpose of evaluating, questioning and voting on such appoint-~~
42 ~~ment and no other action shall be in order during such session.~~ In the
43 event a majority of the senate does not vote to consent to **the senate**

1 **does not confirm** the appointment, the governor, within 30 days after
2 the senate vote on the previous appointee, shall appoint another person
3 possessing the qualifications of office and such subsequent appointment
4 shall be considered by the senate in the same procedure as provided in
5 this section. The same appointment and ~~consent~~ **confirmation** proce-
6 dure shall be followed until a valid appointment has been made. No per-
7 son who has been previously appointed but ~~did not receive the consent~~
8 **of was not confirmed by** the senate shall be appointed again for the
9 same vacancy. If the senate fails to vote on an appointment within the
10 30-day time limitation, the senate shall be deemed to have ~~given consent~~
11 **to confirmed** such appointment.

12 (e) Whenever a vacancy in the office of judge of the court of appeals
13 exists at the time the appointment to fill such vacancy is made pursuant
14 to this act, the appointment shall be effective at the time it is made, but
15 where an appointment is made pursuant to this act to fill a vacancy which
16 will occur at a future date, such appointment shall not take effect until
17 such date.

18 Sec. 6. K.S.A. 20-3002 is hereby amended to read as follows: 20-
19 3002. (a) ~~On and after January 1, 2003, through December 31, 2004, the~~
20 ~~court of appeals shall consist of 11 judges whose positions shall be num-~~
21 ~~bered one to 11. On and after January 1, 2005, through December 31,~~
22 ~~2007, the court of appeals shall consist of 12 judges whose positions shall~~
23 ~~be numbered one to 12. On and after January 1, 2008, through December~~
24 ~~31, 2008, the court of appeals shall consist of 13 judges whose positions~~
25 ~~shall be numbered one to 13. On and after January 1, 2009, the court of~~
26 ~~appeals shall consist of 14 judges whose positions shall be numbered one~~
27 ~~to 14. Judges of the court of appeals shall possess the qualifications pre-~~
28 ~~scribed by law for justices of the supreme court.~~

29 (b) Judges of the court of appeals shall be ~~selected~~ *appointed* in the
30 manner provided by ~~K.S.A. 20-3003 through 20-3010~~ *section 5*, and
31 amendments thereto. Each judge of the court of appeals shall receive an
32 annual salary in the amount prescribed by law. No judge of the court of
33 appeals may receive additional compensation for official services per-
34 formed by the judge. Each such judge shall be reimbursed for expenses
35 incurred in the performance of such judge's official duties in the same
36 manner and to the same extent justices of the supreme court are reim-
37 bursed for such expenses.

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

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

1 Sec. 7. K.S.A. 20-3004 is hereby amended to read as follows: 20-
2 3004. (a) ~~In addition to the powers and duties prescribed by K.S.A. 20-~~
3 ~~119 through 20-131, and amendments thereto, the supreme court nomi-~~
4 ~~nating commission established by section 5 of article 3 of the constitution~~
5 ~~of the state of Kansas shall nominate persons to serve as judges of the~~
6 ~~court of appeals as provided in this act. To carry out its duties under this~~
7 ~~act, the commission shall meet only upon call of the chairperson, and the~~
8 ~~commission shall not take any final action except at such meeting. For~~
9 ~~the purpose of this act, a majority of the commission shall constitute a~~
10 ~~quorum to do business, but no final action shall be taken except upon a~~
11 ~~vote of the majority of the members of the commission. For the purposes~~
12 ~~of this act, the commission shall not be subject to the Kansas open meet-~~
13 ~~ings act as provided in K.S.A. 75-4317 et seq., and amendments thereto.~~
14 ~~—(b) Any person evaluated by the court of appeals nominating com-~~
15 ~~mission to serve as a judge of the court of appeals shall have the quali-~~
16 ~~fications prescribed by subsection (a) of K.S.A. 20-3002, and amendments~~
17 ~~thereto, and shall be a person of recognized integrity, character, ability,~~
18 ~~experience and judicial temperament, to the end that persons serving as~~
19 ~~judges of the court of appeals will be the best qualified therefor. In order~~
20 ~~to obtain the best qualified persons as nominees, the commission shall~~
21 ~~not be limited in its consideration of potential nominees to those persons~~
22 ~~whose names have been submitted to the commission or who have ex-~~
23 ~~pressed a willingness to serve.~~
24 ~~(c) (b) The commission may authorize one or more members of the~~
25 ~~commission to tender a nomination to request any qualified person to~~
26 ~~apply in order to ascertain such person's willingness to serve if nominated,~~
27 ~~but any such tender of nomination request shall be subject to final action~~
28 ~~of the commission under the conditions prescribed by subsection (a) in~~
29 ~~section 2, and amendments thereto.~~
30 ~~(d) No member of the supreme court nominating commission shall~~
31 ~~be eligible for nomination for the office of judge of the court of appeals~~
32 ~~while a member of such commission or for six months thereafter.~~
33 Sec. 8. K.S.A. 20-3005 is hereby amended to read as follows: 20-
34 3005. On the respective July 1, pursuant to subsection (a) of K.S.A. 20-
35 3002, and amendments thereto, the clerk of the supreme court shall notify
36 the chairperson of the ~~supreme~~ court of appeals nominating commission
37 of the ~~number of~~ vacant positions on the court of appeals to be filled by
38 appointment. Upon receipt of such notice, the chairperson shall call a
39 meeting of the commission and submit to the governor a panel of three
40 nominees for the lowest numbered position on the court of appeals for
41 which an appointment is to be made. The governor shall appoint one of
42 such nominees to the position on the court of appeals for which the
43 nominee was nominated within 60 days from the time the panel of nom-

1 inations for such position is submitted to the governor. If the governor
2 fails to make the appointment within such time, the chief justice of the
3 supreme court shall make such appointment from among the persons
4 nominated as provided in this section. When the appointment has been
5 made and the person has informed the clerk of the supreme court in
6 writing of the person's acceptance of such appointment, the clerk of the
7 supreme court shall notify the chairperson of the supreme court nomi-
8 nating commission who again shall call a meeting of the commission and
9 submit to the governor another panel of three nominees for the lowest
10 numbered position remaining on the court of appeals for which no ap-
11 pointment has been made. The process of nomination and appointment
12 provided in this section shall be repeated until nominations and appoint-
13 ments have been made for all positions on the court of appeals for which
14 appointments are to be made. Each appointment to the court of appeals
15 shall be made from a separate panel of nominees, and the appointment
16 to each position shall be made and accepted before any other panel of
17 nominees is submitted to the governor. The nomination of a person on
18 an earlier panel shall not preclude the person's nomination on a subse-
19 quent panel.

20 Sec. 9. K.S.A. 20-3006 is hereby amended to read as follows: 20-
21 3006. (a) Persons who are appointed as judges of the court of appeals
22 pursuant to ~~K.S.A. 20-3005~~ *section 5*, and amendments thereto, shall
23 commence the duties of office upon *the date such appointment takes*
24 *effect*, and each judge shall have all the rights, privileges, powers and
25 duties prescribed by law for the office of judge of the court of appeals.

26 (b) (1) Not less than 60 days prior to the holding of the general elec-
27 tion next preceding the expiration of the term of any judge of the court
28 of appeals, the judge may file in the office of the secretary of state a
29 declaration of candidacy for retention in office. If a declaration is not filed
30 as provided in this section, the position held by the judge shall be vacant
31 upon the expiration of the judge's term of office. If such declaration is
32 filed, the judge's name shall be submitted at the next general election to
33 the electors of the state on a separate judicial ballot, without party des-
34 ignation, reading substantially as follows:

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

37 (2) If a majority of those voting on the question votes against retaining
38 the judge in office, the position which the judge holds shall be vacant
39 upon the expiration of the judge's term of office. Otherwise, unless the
40 judge is removed for cause, the judge shall remain in office for a term of
41 four years from the second Monday in January following the election. At
42 the expiration of each term, unless by law the judge is compelled to retire,
43 the judge shall be eligible for retention in office by election in the manner

1 prescribed in this section.

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

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

13 Sec. 10. K.S.A. 20-3007 is hereby amended to read as follows: 20-
14 3007. (a) Whenever a vacancy shall occur in the office of judge of the
15 court of appeals, or whenever a vacancy will occur in such office on a
16 specified future date, the clerk of the supreme court promptly shall give
17 notice of such vacancy to the ~~chairman~~ *chairperson* of the ~~supreme~~
18 *of appeals* nominating commission. ~~Said chairman~~ *The chairperson* shall
19 call a meeting of the commission for the purpose of nominating persons
20 for appointment to such office. It shall be the duty of the commission to
21 nominate three ~~(3)~~ such persons for each office which is vacant and to
22 submit the names of the persons so nominated to the governor.

23 (b) In order that a vacancy in the office of judge of the court of
24 appeals does not exist for an inordinate length of time, the commission
25 shall conduct the business of selecting nominees for appointment to such
26 office and certifying the same to the governor as promptly and expedi-
27 tiously as possible, having due regard for the importance of selecting the
28 best possible nominees, ~~and in~~. *In* no event shall the commission submit
29 its nominations to the governor more than ~~sixty (60)~~ *60* days prior to nor
30 more than ~~sixty (60)~~ *60* days after the date a vacancy occurs or will occur.

31 Sec. 11. K.S.A. 20-3010 is hereby amended to read as follows: 20-
32 3010. ~~Any person appointed to the office of judge of the court of appeals~~
33 ~~pursuant to K.S.A. 20-3009 shall commence upon the duties of his or her~~
34 ~~office on the date such appointment takes effect, and any person so ap-~~
35 ~~pointed shall have all the rights, privileges, powers and duties prescribed~~
36 ~~by law for the office of judge of the court of appeals.~~ (a) Any such judge
37 who is so appointed to fill a vacancy or appointed by reason of the expi-
38 ration of a term of office, shall serve until the second Monday in January
39 following the next general election which occurs after one year in office
40 and shall be eligible to ~~succeed himself or herself~~ *be retained* in office
41 for a full term of four ~~(4)~~ years as provided in K.S.A. 20-3006, *and amend-*
42 *ments thereto*, for the retention of judges first appointed to the court of
43 appeals.

1 (b) If a majority of the votes cast and counted at such election is in
2 favor of retaining such judge in office, ~~he or she~~ *the judge* shall remain
3 in office for a regular term of four years from the second Monday in
4 January next following such election. Thereafter, such judge shall be sub-
5 ject to retention in office as provided in K.S.A. 20-3006, *and amendments*
6 *thereto*. If a majority of the votes cast and counted at such election is
7 against retaining such judge in office, such judge's position on the court
8 of appeals shall become vacant on the second Monday in January next
9 following the election, and a successor shall be appointed pursuant to
10 ~~K.S.A. 20-3007, 20-3008 and 20-3009~~ *section 5, and amendments thereto*.
11 If such judge does not declare ~~his or her~~ *such judge's* candidacy for elec-
12 tion to ~~succeed himself or herself~~ *be retained* in office, such judge's po-
13 sition on the court of appeals shall be vacant on the second Monday in
14 January next following such election.

15 Sec. 12. K.S.A. 20-3002, 20-3004, 20-3005, 20-3006, 20-3007, 20-
16 3008, 20-3009 and 20-3010 are hereby repealed.

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