

House Concurrent Resolution No. 5015

By Committee on Judiciary

2-15

1 A PROPOSITION to amend sections 2, 5 and 8 of article 3 of the
2 constitution of the state of Kansas; relating to the selection and term of
3 office of supreme court justices.

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*
9 *of the state of Kansas shall be submitted to the qualified electors of the*
10 *state for their approval or rejection: Section 2 article 3 of the constitution*
11 *of the state of Kansas is amended to read as follows:*

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

26 (b) *Justices of the supreme court: (1) Shall hold their offices during*
27 *good behavior; (2) shall be subject to the retirement, discipline and*
28 *removal for cause provisions of section 15 of article 3 of the constitution*
29 *of the state of Kansas; and (3) shall not be subject to a retention*
30 *election."*

31 Sec. 2 The following proposition to amend the
32 constitution of the state of Kansas shall be submitted to the
33 qualified electors of the state for their approval or rejection:
34 Section 5 of the constitution of the state of Kansas is
35 amended to read as follows:

1 **"§ 5. Selection of justices of the Supreme Court. (a)**

2 Any vacancy occurring in the office of any justice of the
3 supreme court and any position to be open thereon as a result
4 of enlargement of the court, or the retirement or ~~failure~~ of an
5 incumbent ~~to file his declaration of candidacy to succeed himself as~~
6 ~~hereinafter required, or failure of a justice to be elected to succeed~~
7 ~~himself~~, shall be filled by appointment by the governor, *with the*
8 *consent of the senate*, of one of three persons possessing the
9 qualifications of office who shall be nominated and whose
10 names shall be submitted to the governor by the supreme
11 court nominating commission established as hereinafter
12 provided.

13 (b) In event of the failure of the governor to make the
14 appointment within sixty days from the time the names of the
15 nominees are submitted to ~~him~~ *the governor*, the chief justice of
16 the supreme court shall make the appointment from such
17 nominees, *with the consent of the senate*.

18 ~~(e) Each justice of the supreme court appointed pursuant to~~
19 ~~provisions of subsection (a) of this section shall hold office for an initial~~
20 ~~term ending on the second Monday in January following the first general~~
21 ~~election that occurs after the expiration of twelve months in office. Not~~
22 ~~less than sixty days prior to the holding of the general election next~~
23 ~~preceding the expiration of his term of office, any justice of the supreme~~
24 ~~court may file in the office of the secretary of state a declaration of~~
25 ~~candidacy for election to succeed himself. If a declaration is not so filed,~~
26 ~~the position held by such justice shall be open from the expiration of his~~
27 ~~term of office. If such declaration is filed, his name shall be submitted at~~
28 ~~the next general election to the electors of the state on a separate judicial~~
29 ~~ballot, without party designation, reading substantially as follows:~~

30 "Shall _____

31 (Here insert name of justice.)

32 _____

33 (Here insert the title of the court.)

34 be retained in office?"

35 If a majority of those voting on the question vote against retaining him
36 in office, the position or office which he holds shall be open upon the
37 expiration of his term of office; otherwise he shall, unless removed for
38 cause, remain in office for the regular term of six years from the second
39 Monday in January following such election. At the expiration of each
40 term he shall, unless by law he is compelled to retire, be eligible for

1 retention in office by election in the manner prescribed in this section.

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

5 (d) No person appointed pursuant to subsection (a) or (b) of this
6 section shall assume the office of justice of the supreme court until the
7 senate, by an affirmative vote of the majority of all members of the senate
8 then elected or appointed and qualified, consents to such
9 appointment. The senate shall vote to consent to any such appointment
10 not later than 30 days after such appointment is received by the senate. If
11 the senate is not in session and will not be in session with the 30-day time
12 limitation, the president of the senate shall convene the senate for the
13 sole purpose of voting on such appointment and no other action shall be
14 in order during such session. In the event a majority of the senate does
15 not vote to consent to the appointment, the governor, within 30 days after
16 the senate vote on the previous appointee, shall appoint another person
17 possessing the qualifications of office, whose name has been submitted to
18 the governor by the supreme court nominating commission, and such
19 subsequent appointment shall be considered by the senate by the same
20 procedure as provided in this section. The same appointment and consent
21 procedure shall be followed until a valid appointment has been made. No
22 person who has previously been appointed but did not receive the consent
23 of the senate shall be appointed again for the same vacancy. If the senate
24 fails to vote on an appointment within the 30-day time limitation set forth
25 herein, the senate shall be deemed to have given consent to such
26 appointment.

27 ~~(d)~~(e) A nonpartisan nominating commission whose duty
28 it shall be to nominate and submit to the governor the names
29 of persons for appointment to fill vacancies in the office of
30 any justice of the supreme court is hereby established, and
31 shall be known as the "supreme court nominating
32 commission." Said commission shall be organized as
33 hereinafter provided.

34 ~~(e)~~(f) The supreme court nominating commission shall be
35 composed as follows: ~~One member, who shall be chairman, chosen~~
36 ~~from among their number by the members of the bar who are residents of~~
37 ~~and licensed in Kansas; one member from each congressional district~~
38 ~~chosen from among their number by the resident members of the bar in~~
39 ~~each such district; and one member, who is not a lawyer, from each~~
40 ~~congressional district, appointed by the governor from among the~~
41 ~~residents of each such district. Three members shall be appointed by the~~

1 *speaker of the house of representatives, three members shall be appointed*
2 *by the president of the senate and three members shall be appointed by*
3 *the governor. All members shall be residents of Kansas. One member*
4 *appointed by the speaker of the house of representatives, one member*
5 *appointed by the president of the senate and one member appointed by*
6 *the governor shall be members of the bar in good standing licensed in*
7 *Kansas. The other members shall not be attorneys. The governor shall*
8 *appoint one of the nine members of the supreme court nominating*
9 *commission to serve as such commission's chairperson.*

10 ~~(f)~~(g) The terms of office, the procedure for selection and
11 certification of the members of the commission and provision
12 for their compensation or expenses shall be as provided by
13 the legislature.

14 ~~(g)~~(h) No member of the supreme court nominating
15 commission shall, while ~~he is~~ a member, hold any other public
16 office by appointment or any official position in a political
17 party or for six months thereafter be eligible for nomination
18 for the office of justice of the supreme court. The
19 commission may act only by the concurrence of a majority of
20 its members.

21 *(i) No justice of the supreme court serving on the supreme court on*
22 *the date of ratification of this amendment by the electors of the state shall*
23 *be required to stand for a retention election in order to be retained in*
24 *office on such date or anytime thereafter."*

25 Sec. 3. The following proposition to amend the
26 constitution of the state of Kansas shall be submitted to the
27 qualified electors of the state for their approval or rejection:
28 Section 8 of the constitution of the state of Kansas is
29 amended to read as follows:

30 **"§ 8. Prohibition of political activity by justices and**
31 **certain judges.** No justice of the supreme court who is
32 appointed ~~or retained~~ under the procedure of section 5 of this
33 article, nor any judge of the district court holding office
34 under a nonpartisan method authorized in subsection (a) of
35 section 6 of this article, shall directly or indirectly make any
36 contribution to or hold any office in a political party or
37 organization or take part in any political campaign."

38 Sec. 4. The following statement shall be printed on the

1 ballot with the amendment as a whole:

2 “*Explanatory statement.* The purpose of this amendment is
3 to allow the governor to appoint a qualified person to the
4 office of justice of the supreme court, and such person’s
5 appointment would be required to be consented to by the
6 senate. If the governor fails to act, the chief justice of the
7 supreme court would appoint a qualified person, and such
8 person’s appointment would also be required to be consented
9 to by the senate. The nonpartisan supreme court nominating
10 commission membership would be changed to include
11 appointments by the speaker of the house of representatives
12 and the president of the senate. The gubernatorial
13 appointments to the commission would be reduced from four
14 members to three members. The members of the bar would
15 no longer elect members of the commission. The commission
16 would continue to nominate three persons for appointment by
17 the governor. A procedure is established whereby senate
18 consent would occur within 30 days of receiving the
19 appointment. If the senate does not consent by a majority
20 vote, the governor would then select an appointment which
21 would again go to the senate for consent. The same
22 appointment and consent procedure would be followed until
23 a valid appointment is made. If the senate fails to vote on an
24 appointment within 30 days, it will be considered that the
25 senate has consented to the appointment. Further, the
26 supreme court justices would hold the office during good
27 behavior, be subject to the retirement, discipline and removal
28 for cause provisions of section 15 of article 3 of the Kansas
29 constitution and would no longer be subject to a retention
30 election.

31 “A vote for this proposition would provide a procedure
32 whereby the governor or chief justice would appoint a person
33 to be a supreme court justice and the senate, by majority
34 vote, would consent to the appointment of supreme court
35 justices. The supreme court nominating commission would
36 continue to nominate three qualified persons to the governor.

1 The supreme court justices would hold the office during good
2 behavior, be subject to the retirement, discipline and removal
3 for cause provisions of section 15 of article 3 of the Kansas
4 constitution and would no longer be subject to a retention
5 election.

6 “A vote against this proposition would continue in effect
7 the current provision whereby the supreme court nominating
8 commission nominates three persons for the office of the
9 supreme court and the governor appoints one of such
10 persons. Further, the justices of the supreme court would
11 continue to hold six year terms and be subject to retention
12 elections.”

13 Sec. 5. This resolution, if approved by two-thirds of the
14 members elected (or appointed) and qualified to the House of
15 Representatives, and two-thirds of the members elected (or
16 appointed) and qualified to the Senate shall be entered on the
17 journals, together with the yeas and nays. The secretary of
18 state shall cause this resolution to be published as provided
19 by law and shall cause the proposed amendment to be
20 submitted to the electors of the state at the general election in
21 November of the year 2012 unless a special election is called
22 at a sooner date by concurrent resolution of the legislature, in
23 which case it shall be submitted to the electors of the state at
24 the special election.

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