

**HOUSE BILL No. 2019**

By Committee on Judiciary

1-16

HB2019-Balloon-Kinzer

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Office of Revisor of Statutes  
February 15, 2013

1 AN ACT concerning the court of appeals, relating to appointment of  
2 judges by the governor; amending K.S.A. 20-3006 and 20-3010 and  
3 K.S.A. 2012 Supp. 20-3002 and repealing the existing sections; also  
4 repealing K.S.A. 20-3004, 20-3005, 20-3007, 20-3008 and 20-3009.  
5

senate confirmation; creating the Kansas  
commission on judicial appointments;

and 75-4319

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

7 New Section 1. (a) (1) On and after July 1, 2013, any vacancy  
8 occurring in the office of any judge of the court of appeals and any  
9 position to be open on the court of appeals as a result of enlargement of  
10 such court, or the retirement or failure of an incumbent to file such judge's  
11 declaration of candidacy to be retained in office as hereinafter required, or  
12 failure of a judge to be elected to be retained in office, shall be filled by  
13 appointment by the governor, with the consent of the senate, of a person  
14 possessing the qualifications of office.

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

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

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

29 (b) No person appointed pursuant to subsection (a) shall assume the  
30 office of judge of the court of appeals until the senate, by an affirmative  
31 vote of the majority of all members of the senate then elected or appointed  
32 and qualified, consents to such appointment. The senate shall vote to  
33 consent to any such appointment not later than 60 days after such  
34 appointment is received by the senate. If the senate is not in session and  
35 will not be in session within the 60-day time limitation, the senate shall  
36 vote to consent to any such appointment not later than 20 days after the

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

12 (c) Persons who are appointed as judges of the court of appeals  
 13 pursuant to K.S.A. 20-3005, prior to its repeal, and this section, shall  
 14 commence the duties of office upon appointment and consent, and each  
 15 judge shall have all the rights, privileges, powers and duties prescribed by  
 16 law for the office of judge of the court of appeals.

17 (d) Judges of the court of appeals shall possess the qualifications  
 18 prescribed by law for justices of the supreme court.  
 19 Sec. 2. K.S.A. 2012 Supp. 20-3002 is hereby amended to read as  
 20 follows: 20-3002. (a) ~~Subject to appropriations thereto, on and after~~  
 21 ~~January 1, 2013,~~ The court of appeals shall consist of 14 judges whose  
 22 positions shall be numbered one to 14. ~~Judges of the court of appeals shall~~  
 23 ~~possess the qualifications prescribed by law for justices of the supreme~~  
 24 ~~court.~~

25 (b) Judges of the court of appeals shall be selected in the manner  
 26 ~~provided by K.S.A. 20-3003 through 20-3010 appointed in the manner~~  
 27 ~~provided by section 1, and amendments thereto.~~ Each judge of the court of  
 28 appeals shall receive an annual salary in the amount prescribed by law. No  
 29 judge of the court of appeals may receive additional compensation for  
 30 official services performed by the judge. Each such judge shall be  
 31 reimbursed for expenses incurred in the performance of such judge's  
 32 official duties in the same manner and to the same extent justices of the  
 33 supreme court are reimbursed for such expenses.

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

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

40 Sec. 3. K.S.A. 20-3006 is hereby amended to read as follows: 20-  
 41 3006. ~~(a) Persons who are appointed as judges of the court of appeals~~  
 42 ~~pursuant to K.S.A. 20-3005, and amendments thereto, shall commence the~~  
 43 ~~duties of office upon appointment, and each judge shall have all the rights,~~

Insert New Sec. 2 and  
 New Sec. 3, Attached  
 Redesignate sections

1 ~~privileges, powers and duties prescribed by law for the office of judge of~~  
2 ~~the court of appeals.~~

3 (b) (1) (a) Not less than 60 days prior to the holding of the general  
4 election next preceding the expiration of the term of any judge of the court  
5 of appeals, the judge may file in the office of the secretary of state a  
6 declaration of candidacy for retention in office. If a declaration is not filed  
7 as provided in this section, the position held by the judge shall be vacant  
8 upon the expiration of the judge's term of office. If such declaration is  
9 filed, the judge's name shall be submitted at the next general election to the  
10 electors of the state on a separate judicial ballot, without party designation,  
11 reading substantially as follows:

12  
13 "Shall \_\_\_\_\_ (Here insert name of judge.) \_\_\_\_\_, Judge of the Court  
14 of Appeals, be retained in office?"  
15

16 (2) (b) If a majority of those voting on the question votes against  
17 retaining the judge in office, the position which the judge holds shall be  
18 vacant upon the expiration of the judge's term of office. Otherwise, unless  
19 the judge is removed for cause, the judge shall remain in office for a term  
20 of four years from the second Monday in January following the election.  
21 At the expiration of each term, unless by law the judge is compelled to  
22 retire, the judge shall be eligible for retention in office by election in the  
23 manner prescribed in this section.

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

31 (4) (d) Election laws applicable to the general election of other state  
32 officers shall apply to elections upon the question of retention of judges of  
33 the court of appeals pursuant to this section, to the extent that they are not  
34 in conflict with and are consistent with the provisions of this ~~set~~ section.

35 Sec. 4. K.S.A. 20-3010 is hereby amended to read as follows: 20-  
36 3010. (a) Any person appointed to the office of judge of the court of  
37 appeals pursuant to K.S.A. 20-3009 shall commence upon the duties of his  
38 or her office on the date such appointment takes effect, and any person so  
39 appointed shall have all the rights, privileges, powers and duties prescribed  
40 by law for the office of judge of the court of appeals. Any such judge who  
41 is so appointed to fill a vacancy or appointed by reason of the expiration of  
42 a term of office, shall serve until the second Monday in January following  
43 the next general election which occurs after one year in office and shall be

1 eligible to ~~succeed himself or herself~~ *be retained* in office for a full term of  
2 four (4) years as provided in K.S.A. 20-3006, *and amendments thereto*, for  
3 the retention of judges first appointed to the court of appeals.

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

18 Sec. 5. K.S.A. 20-3004, 20-3005, 20-3006, 20-3007, 20-3008, 20-  
19 3009 and 20-3010 and K.S.A. 2012 Supp. 20-3002 are hereby repealed.

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

Insert Sec. 7. K.S.A. 2012  
Supp. 75-4319, Attached  
Redesignate sections

and 75-4319

[HB2019-Balloon-Kinzer-Attachments] Prepared By: Office of Revisor of Statutes

New Sec. 2. (a) There is hereby created the Kansas commission on judicial appointments. The commission shall be composed of nine members, appointed as follows:

- (1) Four non-lawyer members, one member from each congressional district, appointed by the speaker of the house;
- (2) one non-lawyer member from the first congressional district appointed by the minority leader of the house;
- (3) one non-lawyer member from the fourth congressional district appointed by the state treasurer;
- (4) one lawyer member from the third congressional district appointed by the chief justice of the supreme court;
- (5) one lawyer member from the second congressional district appointed by the attorney general; and
- (6) one retired district judge appointed by the Kansas county and district attorneys association who shall serve as chairperson of the commission.

(b) Members shall be appointed for terms of two years. All members may be reappointed. Members shall serve without salary, but may be reimbursed for travel and other expenses actually and necessarily incurred in the performance of their duties.

(c) A majority of the commission shall constitute a quorum to do business, but no final action shall be taken except upon a vote of the majority of the members of the commission. The commission shall be subject to the open meetings act, K.S.A. 75-4317 through 75-4320a, and amendments thereto. The commission, in accordance with K.S.A. 75-4319, and amendments thereto, may recess for a closed or executive meeting when it is considering confidential information related to the appointee's qualifications for office. Any confidential documents or other confidential information obtained by the commission shall be privileged and confidential, shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(d) Whenever the governor or the chief justice of the supreme court makes an appointment to the position of judge of the court of appeals, subject to senate confirmation, the commission shall hold a meeting to interview such appointee within 30 days after the appointment is made. The commission shall obtain any information related to the appointee's qualifications for office

that the commission deems necessary. The commission shall prepare a written report of its assessment of the appointee's qualifications for office. A majority of the commission shall approve the written report and submit such report to the president of the senate and the chairperson of the judiciary committee of the senate not later than 30 days after the appointment is made.

New Sec. 3. (a) Notwithstanding any other law to the contrary, all appointments to the position of judge of the court of appeals made by the governor or the chief justice of the supreme court, which are subject to senate confirmation, shall be considered and acted upon by the senate only in open session.

(b) When any appointment described in subsection (a) is received by the senate, such appointment shall be referred to the judiciary committee of the senate by the president of the senate immediately after the written report concerning such appointment is received from the Kansas commission on judicial appointments or, if no written report is received within the time specified in section 2, and amendments thereto, on the next legislative day following the last day of the period of time specified for submission of such report in section 2, and amendments thereto.

(c) Such appointment referred to the judiciary committee shall be returned to the senate within 15 legislative days after the same are referred, together with a report thereon. If the appointment is not returned to the senate within the period of time specified for its return, the appointment shall be considered to be returned to the senate without recommendation on the next legislative day following the last day of the period of time specified for its return.

(d) Any such appointment may be considered and acted upon by the senate at any time after the appointment is returned to the senate. No motion to confirm any such appointment shall be in order without the unanimous consent of the senate until the appointment is returned to the senate.

Sec. 7. K.S.A. 2012 Supp. 75-4319 is hereby amended to read as follows: 75-4319. (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and

(3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

- (1) Personnel matters of nonelected personnel;
- (2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;
- (3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;
- (4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- (5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;
- (6) preliminary discussions relating to the acquisition of real property;
- (7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804, and amendments thereto;
- (8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (d)(1) of K.S.A. 38-2212, and amendments thereto, or subsection (e) of K.S.A. 38-2213, and amendments thereto;
- (9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243, and amendments thereto;
- (10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596, and amendments thereto;
- (11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 39-7,119, and amendments thereto;
- (12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;
- (13) matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or

equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments;

(14) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto;

(15) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2012 Supp. 75-7427, and amendments thereto; ~~and~~

(16) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2012 Supp. 46-3801, and amendments thereto; and

(17) matters permitted to be discussed in a closed or executive meeting pursuant to section 2, and amendments thereto.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

(d) (1) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(13), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

(2) (A) Except as otherwise provided by law, any confidential documents, records or reports relating to the prisoner review board provided or received under the provisions of subsection (b)(16) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

(B) Notwithstanding any other provision of law to the contrary, any summary statement provided or received under the provisions of subsection (b)(16) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.