

HOUSE BILL No. 2019

By Committee on Judiciary

1-16

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

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 therefor, 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,~~

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 ~~act~~ 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.