

As Amended by House Committee

Session of 2013

House Concurrent Resolution No. 5002

By Committee on Judiciary

1-16

1 A PROPOSITION to amend the constitution of the state of Kansas by
2 revising article 3 thereof, relating to the judiciary.

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

12 "Article 3.—JUDICIAL

13 "§ 1. **Judicial power; seals; rules.** The judicial power of
14 this state shall be vested exclusively in one court of justice,
15 which shall be divided into one supreme court, one court of
16 appeals, district courts, and such other courts as are provided by
17 law; and all courts of record shall have a seal. The supreme court
18 shall have general administrative authority over all courts in this
19 state.

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

36 "§ 3. **Jurisdiction and terms.** The supreme court shall

1 have original jurisdiction in proceedings in quo warranto,
2 mandamus, and habeas corpus; and such appellate jurisdiction as
3 may be provided by law. It shall hold one term each year at the
4 seat of government and such other terms at such places as may
5 be provided by law, and its jurisdiction shall be co-extensive
6 with the state.

7 **"§ 4. Reporter; clerk.** There shall be appointed, by the
8 justices of the supreme court, a reporter and clerk of such court,
9 who shall hold their offices two years, and whose duties shall be
10 prescribed by law.

11 **"§ 5. Selection of justices of the supreme court.** (a) (1)
12 Any vacancy occurring in the office of any justice of the
13 supreme court and any position to be open on the supreme court
14 as a result of enlargement of such court, or the retirement or
15 failure of an incumbent to file such justice's declaration of
16 candidacy to be retained in office as hereinafter required, or
17 failure of a justice to be elected to be retained in office, shall be
18 filled by appointment by the governor, with the consent of the
19 senate, of a person possessing the qualifications of office.

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

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

28 (4) Whenever a vacancy in the office of justice of the
29 supreme court exists at the time the appointment to fill such
30 vacancy is made pursuant to this section, the appointment shall
31 be effective at the time it is made, but where an appointment is
32 made pursuant to this section to fill a vacancy which will occur
33 at a future date, such appointment shall not take effect until such
34 date.

35 (b) No person appointed pursuant to subsection (a) shall
36 assume the office of justice of the supreme court until the senate,
37 by an affirmative vote of the majority of all members of the
38 senate then elected or appointed and qualified, consents to such
39 appointment. The senate shall vote to consent to any such
40 appointment not later than 60 days after such appointment is
41 received by the senate. If the senate is not in session and will not
42 be in session within the 60-day time limitation, the senate shall
43 vote to consent to any such appointment not later than 20 days

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

14 (c) (1) Each justice of the supreme court appointed pursuant
15 to subsection (a) and consented to pursuant to subsection (b)
16 shall hold office for an initial term ending on the second Monday
17 in January following the first general election that occurs after
18 the expiration of 12 months in office.

19 (2) Not less than 60 days prior to the holding of the general
20 election next preceding the expiration of the term of any justice
21 of the supreme court, the justice may file in the office of the
22 secretary of state a declaration of candidacy for retention in
23 office. If a declaration is not filed as provided in this section, the
24 position held by the justice shall be vacant upon the expiration of
25 the justice's term of office. If such declaration is filed, the
26 justice's name shall be submitted at the next general election to
27 the electors of the state on a separate judicial ballot, without
28 party designation, reading substantially as follows:

29 "Shall (Here insert name of justice.), Justice of the Supreme
30 Court, be retained in office?"

31 (3) If a majority of those voting on the question vote against
32 retaining the justice in office, the position which the justice holds
33 shall be vacant upon the expiration of the justice's term of office.
34 Otherwise, unless the justice is removed for cause, the justice
35 shall remain in office for the regular term of six years from the
36 second Monday in January following the election. At the
37 expiration of each term, unless by law the justice is compelled to
38 retire, the justice shall be eligible for retention in office by
39 election in the manner prescribed in this section.

40 (4) If a majority of those voting on the question vote against
41 the justice's retention, the secretary of state, following the final
42 canvass of votes on the question, shall certify the results to the
43 clerk of the supreme court. Any such justice who has not been

1 retained in office pursuant to this section shall not be eligible for
2 ~~nomination or~~ appointment to the office of justice of the supreme
3 court prior to the expiration of six years after the expiration of
4 the justice's term of office.

5 **"§ 6. Court of appeals.** (a) (1) The court of appeals shall
6 consist of 14 judges whose positions shall be numbered one to
7 14. **The court of appeals shall be a part of the court of justice**
8 **in which the judicial power of the state is vested by section 1**
9 **of this article and shall be subject to the general**
10 **administrative authority of the supreme court. The court of**
11 **appeals shall have such jurisdiction over appeals in civil and**
12 **criminal cases and from administrative bodies and officers of**
13 **the state as may be prescribed by law, and shall have such**
14 **original jurisdiction as may be necessary to the complete**
15 **determination of any cause on review. During the pendency**
16 **of any appeal, the court of appeals, on such terms as may be**
17 **just, may make an order suspending further proceedings in**
18 **the court below, until the decision of the court of appeals.**

19 (2) Any vacancy occurring in the office of any judge of the
20 court of appeals and any position to be open on the court of
21 appeals as a result of enlargement of such court, or the retirement
22 or failure of an incumbent to file such judge's declaration of
23 candidacy to be retained in office as hereinafter required, or
24 failure of a judge to be elected to be retained in office, shall be
25 filled by appointment by the governor, with the consent of the
26 senate, of a person possessing the qualifications of office.

27 ~~(2)~~ (3) Whenever a vacancy occurs, will occur or position
28 opens on the court of appeals, the clerk of the supreme court
29 shall promptly give notice to the governor.

30 ~~(3)~~ (4) In event of the failure of the governor to make the
31 appointment within 60 days from the date such vacancy occurred
32 or position became open, the chief justice of the supreme court,
33 with the consent of the senate, shall make the appointment of a
34 person possessing the qualifications of office.

35 ~~(4)~~ (5) Whenever a vacancy in the office of judge of the
36 court of appeals exists at the time the appointment to fill such
37 vacancy is made pursuant to this section, the appointment shall
38 be effective at the time it is made, but where an appointment is
39 made pursuant to this section to fill a vacancy which will occur
40 at a future date, such appointment shall not take effect until such
41 date.

42 (b) No person appointed pursuant to subsection (a) shall
43 assume the office of judge of the court of appeals until the

1 senate, by an affirmative vote of the majority of all members of
2 the senate then elected or appointed and qualified, consents to
3 such appointment. The senate shall vote to consent to any such
4 appointment not later than 60 days after such appointment is
5 received by the senate. If the senate is not in session and will not
6 be in session within the 60-day time limitation, the senate shall
7 vote to consent to any such appointment not later than 20 days
8 after the senate begins its next session. In the event a majority of
9 the senate does not vote to consent to the appointment, the
10 governor, within 60 days after the senate vote on the previous
11 appointee, shall appoint another person possessing the
12 qualifications of office and such subsequent appointment shall be
13 considered by the senate in the same procedure as provided in
14 this article. The same appointment and consent procedure shall
15 be followed until a valid appointment has been made. No person
16 who has been previously appointed but did not receive the
17 consent of the senate shall be appointed again for the same
18 vacancy. If the senate fails to vote on an appointment within the
19 time limitation imposed by this subsection, the senate shall be
20 deemed to have given consent to such appointment.

21 (c) (1) Each judge of the court of appeals appointed
22 pursuant to subsection (a) and consented to pursuant to
23 subsection (b) shall hold office for an initial term ending on the
24 second Monday in January following the first general election
25 that occurs after the expiration of 12 months in office.

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

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

38 (3) If a majority of those voting on the question vote against
39 retaining the judge in office, the position which the judge holds
40 shall be vacant upon the expiration of the judge's term of office.
41 Otherwise, unless the judge is removed for cause, the judge shall
42 remain in office for the regular term of four years from the
43 second Monday in January following the election. At the

1 expiration of each term, unless by law the judge is compelled to
2 retire, the judge shall be eligible for retention in office by
3 election in the manner prescribed in this section.

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

12 (d) The supreme court may assign a judge of the court of
13 appeals to serve temporarily on the supreme court.

14 ~~(e) The supreme court or the court of appeals may assign a~~
15 ~~district judge to serve temporarily on the court of appeals.~~

16 **"§ 7. District courts.** (a) The state shall be divided into
17 judicial districts as provided by law. Each judicial district shall
18 have at least one district judge. The term of office of each judge
19 of the district court shall be four years. District court shall be
20 held at such times and places as may be provided by law. The
21 district judges shall be elected by the electors of the respective
22 judicial districts unless the electors of a judicial district have
23 adopted and not subsequently rejected a method of nonpartisan
24 selection. The legislature shall provide a method of nonpartisan
25 selection of district judges and for the manner of submission and
26 resubmission thereof to the electors of a judicial district. A
27 nonpartisan method of selection of district judges may be
28 adopted, and once adopted may be rejected, only by a majority of
29 electors of a judicial district voting on the question at an election
30 in which the proposition is submitted. Whenever a vacancy
31 occurs in the office of district judge, it shall be filled by
32 appointment by the governor until the next general election that
33 occurs more than 30 days after such vacancy, or as may be
34 provided by such nonpartisan method of selection.

35 (b) The district courts shall have such jurisdiction in their
36 respective districts as may be provided by law.

37 (c) The legislature shall provide for clerks of the district
38 courts.

39 (d) Provision may be made by law for judges pro tem of the
40 district court.

41 (e) The supreme court or any justice thereof shall have the
42 power to assign judges of district courts temporarily to other
43 districts.

1 (f) The supreme court may assign a district judge to serve
2 temporarily on the supreme court.

3 (g) The supreme court or the court of appeals may assign a
4 district judge to serve temporarily on the court of appeals.

5 **"§ 8. Qualifications of justices and judges.** Justices of the
6 supreme court, judges of the court of appeals and judges of the
7 district courts shall be at least 30 years of age and shall be duly
8 authorized by the supreme court of Kansas to practice law in the
9 courts of this state and shall possess such other qualifications as
10 may be prescribed by law.

11 **"§ 9. Prohibition of political activity by justices and
12 certain judges.** No justice of the supreme court who is appointed
13 or retained under the procedure of section 5 of this article, nor
14 any judge of the court of appeals who is appointed or retained
15 under the procedure of section 6 of this article, nor any judge of
16 the district court holding office under a nonpartisan method
17 authorized in subsection (a) of section 7 of this article, shall
18 directly or indirectly make any contribution to or hold any office
19 in a political party or organization or take part in any political
20 campaign.

21 **"§ 10. Extension of terms until successor qualified.** All
22 judicial officers shall hold their offices until their successors
23 shall have qualified.

24 **"§ 11. Compensation of justices and judges; certain
25 limitation.** The justices of the supreme court, judges of the court
26 of appeals and judges of the district courts shall receive for their
27 services such compensation as may be provided by law, which
28 shall not be diminished during their terms of office, unless by
29 general law applicable to all salaried officers of the state. Such
30 justices or judges shall receive no fees or perquisites nor hold
31 any other office of profit or trust under the authority of the state,
32 or the United States except as may be provided by law, or
33 practice law during their continuance in office.

34 **"§ 12. Removal of justices and judges.** Justices of the
35 supreme court may be removed from office by impeachment and
36 conviction as prescribed in article 2 of this constitution. In
37 addition to removal by impeachment and conviction, justices
38 may be retired after appropriate hearing, upon certification to the
39 governor, by the supreme court that such justice is so
40 incapacitated as to be unable to perform adequately such justice's
41 duties. Other judges shall be subject to retirement for incapacity,
42 and to discipline, suspension and removal for cause by the
43 supreme court after appropriate hearing.

1 **"§ 13. Savings clause.** Nothing contained in this
2 amendment to the constitution shall: (a) Shorten the term of
3 office or abolish the office of any justice of the supreme court,
4 any judge of the court of appeals, any judge of the district court,
5 or any other judge of any other court who is holding office at the
6 time this amendment becomes effective, or who is holding office
7 at the time of adoption, rejection, or resubmission of a
8 nonpartisan method of selection of district judges as provided in
9 subsection (a) of section 7 of this article, and all such justices
10 and judges shall hold their respective offices for the terms for
11 which elected or appointed unless sooner removed in the manner
12 provided by law; (b) repeal any statute of this state relating to the
13 supreme court, the supreme court nominating commission, the
14 court of appeals, district courts, or any other court, or relating to
15 the justices or judges of such courts, and such statutes shall
16 remain in force and effect until amended or repealed by the
17 legislature."

18 Sec. 2. The following statement shall be printed on the ballot with the
19 amendment as a whole:

20 "*Explanatory statement.* The purpose of this amendment is to
21 place the law concerning the court of appeals into the
22 constitution and to do away with the supreme court
23 nominating commission. The governor will appoint a
24 qualified person, or if the governor fails to act, the chief
25 justice of the supreme court would appoint a qualified person,
26 and such person's appointment would be required to be
27 confirmed by the senate. A procedure is established whereby
28 senate confirmation would occur within 60 days of receiving
29 the appointment. If the senate does not confirm the
30 appointment a majority vote, the governor would then appoint
31 another qualified person, and such person's appointment
32 would again go to the senate for confirmation. The same
33 appointment and confirmation procedure would be followed
34 until a valid appointment is made. If the senate fails to vote
35 on an appointment within 60 days, it will be considered that
36 the senate has confirmed the appointment.

37 "A vote for this proposition would provide a procedure whereby
38 the governor or chief justice would appoint a person to be a
39 supreme court justice or court of appeals judge and the senate,
40 by majority vote, would confirm the appointment of the
41 supreme court justice or court of appeals judge.

42 "A vote against this proposition would continue in effect the
43 current provision whereby the supreme court nominating

1 commission nominates three persons for the office of the
2 supreme court or court of appeals and the governor appoints
3 one of such persons."

4 Sec. 3. This resolution, if approved by two-thirds of the members
5 elected (or appointed) and qualified to the House of Representatives, and
6 two-thirds of the members elected (or appointed) and qualified to the
7 Senate shall be entered on the journals, together with the yeas and nays.
8 The secretary of state shall cause this resolution to be published as
9 provided by law and shall cause the proposed amendment to be submitted
10 to the electors of the state at the election in ~~August~~ **November** in the year
11 2014 unless a special election is called at a sooner date by concurrent
12 resolution of the legislature, in which case it shall be submitted to the
13 electors of the state at the special election.