

**SENATE BILL No. 417**

By Committee on Ways and Means

2-24

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1 AN ACT concerning the court of appeals; relating to appointment of  
2 judges; amending K.S.A. 2013 Supp. 20-3002, 20-3006 and 20-3010  
3 and repealing the existing sections; also repealing K.S.A. 2013 Supp.  
4 20-3020.

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

7 New Section 1. (a) In addition to the powers and duties prescribed by  
8 K.S.A. 20-119 through 20-131, and amendments thereto, the supreme  
9 court nominating commission established by section 5 of article 3 of the  
10 constitution of the state of Kansas shall nominate persons to serve as  
11 judges of the court of appeals as provided in this act. To carry out its duties  
12 under this act, the commission shall meet only upon call of the  
13 chairperson, and the commission shall not take any final action except at  
14 such meeting. For the purpose of this act, a majority of the commission  
15 shall constitute a quorum to do business, but no final action shall be taken  
16 except upon a vote of the majority of the members of the commission. For  
17 the purposes of this act, the commission shall not be subject to the Kansas  
18 open meetings act as provided in K.S.A. 75-4317 et seq., and amendments  
19 thereto.

20 (b) Any person nominated by the commission to serve as a judge of  
21 the court of appeals shall have the qualifications prescribed by subsection  
22 (a) of K.S.A. 20-3002, and amendments thereto, and shall be a person of  
23 recognized integrity, character, ability, experience and judicial  
24 temperament, to the end that persons serving as judges of the court of  
25 appeals will be the best qualified therefor. In order to obtain the best  
26 qualified persons as nominees, the commission shall not be limited in its  
27 consideration of potential nominees to those persons whose names have  
28 been submitted to the commission or who have expressed a willingness to  
29 serve.

30 (c) The commission may authorize one or more members of the  
31 commission to tender a nomination to any qualified person in order to  
32 ascertain such person's willingness to serve if nominated, but any such  
33 tender of nomination shall be subject to final action of the commission  
34 under the conditions prescribed by subsection (a).

35 (d) No member of the supreme court nominating commission shall be  
36 eligible for nomination for the office of judge of the court of appeals while

1 a member of such commission or for six months thereafter.

2 New Sec. 2. On the respective July 1, pursuant to subsection (a) of  
3 K.S.A. 20-3002, and amendments thereto, the clerk of the supreme court  
4 shall notify the chairperson of the supreme court nominating commission  
5 of the number of vacant positions on the court of appeals to be filled by  
6 appointment. Upon receipt of such notice, the chairperson shall call a  
7 meeting of the commission and submit to the governor a panel of three  
8 nominees for the lowest numbered position on the court of appeals for  
9 which an appointment is to be made. The governor shall appoint one of  
10 such nominees to the position on the court of appeals for which the  
11 nominee was nominated within 60 days from the time the panel of  
12 nominations for such position is submitted to the governor. If the governor  
13 fails to make the appointment within such time, the chief justice of the  
14 supreme court shall make such appointment from among the persons  
15 nominated as provided in this section. When the appointment has been  
16 made and the person has informed the clerk of the supreme court in  
17 writing of the person's acceptance of such appointment, the clerk of the  
18 supreme court shall notify the chairperson of the supreme court  
19 nominating commission who again shall call a meeting of the commission  
20 and submit to the governor another panel of three nominees for the lowest  
21 numbered position remaining on the court of appeals for which no  
22 appointment has been made. The process of nomination and appointment  
23 provided in this section shall be repeated until nominations and  
24 appointments have been made for all positions on the court of appeals for  
25 which appointments are to be made. Each appointment to the court of  
26 appeals shall be made from a separate panel of nominees, and the  
27 appointment to each position shall be made and accepted before any other  
28 panel of nominees is submitted to the governor. The nomination of a  
29 person on an earlier panel shall not preclude the person's nomination on a  
30 subsequent panel.

31 New Sec. 3. (a) Whenever a vacancy shall occur in the office of judge  
32 of the court of appeals, or whenever a vacancy will occur in such office on  
33 a specified future date, the clerk of the supreme court promptly shall give  
34 notice of such vacancy to the chairman of the supreme court nominating  
35 commission. Such chairman shall call a meeting of the commission for the  
36 purpose of nominating persons for appointment to such office. It shall be  
37 the duty of the commission to nominate three such persons for each office  
38 which is vacant and to submit the names of the persons so nominated to  
39 the governor.

40 (b) In order that a vacancy in the office of judge of the court of  
41 appeals does not exist for an inordinate length of time, the commission  
42 shall conduct the business of selecting nominees for appointment to such  
43 office and certifying the same to the governor as promptly and

1 expeditiously as possible, having due regard for the importance of  
2 selecting the best possible nominees, and in no event shall the commission  
3 submit its nominations to the governor more than 60 days prior to nor  
4 more than 60 days after the date a vacancy occurs or will occur.

5 New Sec. 4. (a) After the supreme court nominating commission has  
6 nominated and submitted to the governor the required number of nominees  
7 for appointment to fill a vacancy in the office of judge of the court of  
8 appeals, and prior to the appointment of a successor to such office, any  
9 nomination may be withdrawn for cause of a substantial nature affecting  
10 the nominee's qualifications to hold office, and another nominee may be  
11 substituted therefor. If a nominee dies or requests in writing that their  
12 name be withdrawn, the commission shall nominate another person to  
13 replace such nominee.

14 (b) Whenever there are existing at the same time two or more  
15 vacancies in the office of judge of the court of appeals and the supreme  
16 court nominating commission has submitted to the governor the required  
17 number of nominees for each of such vacancies, the commission may  
18 withdraw the lists of nominations, prior to any appointment being made,  
19 and change any of the persons so nominated from one list to another and  
20 resubmit them as so changed, or may substitute a new nominee for any of  
21 those previously nominated. The action of the commission in withdrawing  
22 nominations may be taken at the same meeting at which nominations are  
23 made, or at any later meeting called for such purpose.

24 New Sec. 5. (a) Whenever the supreme court nominating commission  
25 has submitted to the governor the required number of nominations for  
26 appointment to fill a vacancy in the office of judge of the court of appeals,  
27 it shall be the duty of the governor to make such appointment within 60  
28 days after such nominations are submitted or resubmitted. If the governor  
29 fails to make the appointment within such 60-day period, the chief justice  
30 of the supreme court shall make the appointment from among such  
31 nominees. Whenever any change in the nominations is made pursuant to  
32 section 4, and amendments thereto, such 60-day period commences on the  
33 day the nominations are resubmitted.

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

40 Sec. 6. K.S.A. 2013 Supp. 20-3002 is hereby amended to read as  
41 follows: 20-3002. (a) The court of appeals shall consist of 14 judges whose  
42 positions shall be numbered one to 14. *Judges of the court of appeals shall*  
43 *possess the qualifications prescribed by law for justices of the supreme*

1 court.

2 (b) Judges of the court of appeals shall be ~~appointed~~ *selected* in the  
3 manner provided by ~~K.S.A. 2013 Supp. 20-3020~~ *sections 1 through 5*, and  
4 amendments thereto. Each judge of the court of appeals shall receive an  
5 annual salary in the amount prescribed by law. No judge of the court of  
6 appeals may receive additional compensation for official services  
7 performed by the judge. Each such judge shall be reimbursed for expenses  
8 incurred in the performance of such judge's official duties in the same  
9 manner and to the same extent justices of the supreme court are  
10 reimbursed for such expenses.

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

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

17 Sec. 7. K.S.A. 2013 Supp. 20-3006 is hereby amended to read as  
18 follows: 20-3006. (a) *Persons who are appointed as judges of the court of*  
19 *appeals pursuant to section 2, and amendments thereto, shall commence*  
20 *the duties of office upon appointment, and each judge shall have all the*  
21 *rights, privileges, powers and duties prescribed by law for the office of*  
22 *judge of the court of appeals.*

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

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

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

42 ~~(c)~~ (d) If a majority of those voting on the question votes against the  
43 judge's retention, the secretary of state, following the final canvass of votes

1 on the question, shall certify the results to the clerk of the supreme court.  
2 Any such judge who has not been retained in office pursuant to this section  
3 shall not be eligible for nomination or appointment to the office of judge  
4 of the court of appeals prior to the expiration of four years after the  
5 expiration of the judge's term of office.

6 (d) (e) Election laws applicable to the general election of other state  
7 officers shall apply to elections upon the question of retention of judges of  
8 the court of appeals pursuant to this section, to the extent that they are not  
9 in conflict with and are consistent with the provisions of this section.

10 Sec. 8. K.S.A. 2013 Supp. 20-3010 is hereby amended to read as  
11 follows: 20-3010. (a) Any person appointed to the office of judge of the  
12 court of appeals *pursuant to section 5, and amendments thereto, shall*  
13 *commence upon the duties of such office on the date such appointment*  
14 *takes effect, and any person so appointed shall have all the rights,*  
15 *privileges, powers and duties prescribed by law for the office of judge of*  
16 *the court of appeals. Any such judge who is so appointed to fill a vacancy*  
17 *or appointed by reason of the expiration of a term of office, shall serve*  
18 *until the second Monday in January following the next general election*  
19 *which occurs after one year in office and shall be eligible to be retained in*  
20 *office for a full term of four years as provided in K.S.A. 20-3006, and*  
21 *amendments thereto, for the retention of judges first appointed to the court*  
22 *of appeals.*

23 (b) If a majority of the votes cast and counted at such election is in  
24 favor of retaining such judge in office, the judge shall remain in office for  
25 a regular term of four years from the second Monday in January next  
26 following such election. Thereafter, such judge shall be subject to retention  
27 in office as provided in K.S.A. 20-3006, and amendments thereto. If a  
28 majority of the votes cast and counted at such election is against retaining  
29 such judge in office, such judge's position on the court of appeals shall  
30 become vacant on the second Monday in January next following the  
31 election, and a successor shall be appointed pursuant to ~~K.S.A. 2013 Supp.~~  
32 ~~20-3020~~ *sections 3 through 5, and amendments thereto. If such judge does*  
33 *not declare such judge's candidacy for election to be retained in office,*  
34 *such judge's position on the court of appeals shall be vacant on the second*  
35 *Monday in January next following such election.*

36 Sec. 9. K.S.A. 2013 Supp. 20-3002, 20-3006, 20-3010 and 20-3020  
37 are hereby repealed.

38 Sec. 10. This act shall take effect and be in force from and after its  
39 publication in the statute book.