

**UPDATED**  
*SESSION OF 2016*

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 128**

As Agreed to April 29, 2016

**Brief\***

House Sub. for SB 128 would amend the law concerning municipal courts and the filling of judicial vacancies.

***Municipal Courts***

The bill would amend the statutes governing expungement for convictions of city ordinances or state laws, as well as arrests, to provide that when an expungement is ordered for a case that was appealed from a municipal court, the district court clerk must send a certified copy of the expungement order to the municipal court, which shall order the case expunged once the copy of the order is received.

The bill would amend the statute governing appeals from municipal courts to require the district court to send notice of dismissal, conviction, or acquittal to the municipal court clerk at the end of the case. The bill also would make technical amendments to update statutory and agency references. [Note: The bill appears to extend a sunset date for the Judicial Branch surcharge to fund costs of non-judicial personnel. This provision was enacted in 2015 and is included in this bill to reconcile conflicting versions of the statute.]

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

### ***Judicial Vacancies***

The bill also would amend and create law related to the filling of judicial vacancies, including the method used to select the chairperson and lawyer members of the Supreme Court Nominating Commission and lawyer members of judicial district nominating commissions, the applicability of the Kansas Open Meetings Act (KOMA) and Kansas Open Records Act (KORA) to nominating commissions, and change the number of nominees a district judicial nominating commission would be required to nominate.

### ***Selection of Lawyer Members of Nominating Commissions***

The bill would require applicants for admission to practice law to provide the following information required of persons applying to register to vote: name, place of residence, date of birth, sex, and the last four digits of the person's social security number or the person's full driver's license or nondriver's license identification card number. A pending applicant would be required to notify the Clerk of the Supreme Court (Clerk) in writing of any change in name or address within ten days of such change. Any person whose application is pending as of the effective date of the bill would be required to provide the correct information required above to the Clerk within 60 days of the effective date of the bill. The Clerk would be required to send notice to all pending applicants of this requirement within 30 days of the effective date of the bill.

The bill would enact new law requiring the Clerk to maintain a roster of attorneys licensed to practice law in Kansas, including the information required above and the congressional and judicial districts of residence for each person. Any Kansas licensed attorney would be required to notify the Clerk of any change in name or residential address within ten days of such change. Any Kansas licensed attorney whose information as required above is not correct on the roster as of the effective date of the bill would be required to

provide the correct information within 60 days of the effective date of the bill. The Clerk would be required to send notice to all Kansas licensed attorneys of this requirement within 30 days of the effective date of the bill.

To be eligible to make nominations or receive and cast ballots for the chairperson or members of the Supreme Court Nominating Commission, attorneys would be required to be licensed and residing in Kansas (and, for Commission members, the appropriate congressional district) on or before the February 15 prior to the selection of such positions. The same requirement would apply with regard to elections of lawyer members of district judicial nominating commissions, except the relevant date would be November 15.

On or before the February 20 preceding the selection of the chairperson or members of the Supreme Court Nominating Commission, the Clerk would be required to transmit a certified copy of the roster of Kansas licensed attorneys to the Secretary of State, containing the voter information set forth above for those residing in Kansas (or within the relevant congressional district for a member election) as of February 15, in a format prescribed by the Secretary of State, who would then append the unique voter identification number for each person listed on the roster having such a number.

The same procedure would be required on or before the November 20 preceding the election of a lawyer member of a district judicial nominating commission, with the same voter information required for each person residing within the judicial district as of November 15.

The names, residential addresses, dates of birth, unique voter identification numbers, and dates of licensure to practice law in Kansas of all persons on such certified rosters would be disclosed upon proper request to the Clerk or to the Secretary of State pursuant to KORA.

The statute governing voting procedures to select members of the Supreme Court Nominating Commission would be amended to require the Clerk to use the certified roster of attorneys as provided to the Secretary of State. Provisions would be added requiring the Clerk to preserve qualification certificates for five years and then destroy the certificates. Within 14 days after a selection is certified, the Clerk would be required to create a list containing the position and year of the selection and the names and residential addresses of all persons who returned a ballot with a signed certificate. The Clerk would be required to transmit a certified copy of this list to the Secretary of State, in a format prescribed by the Secretary of State. The certificates would be subject to a KORA request made to the Clerk, and the lists would be subject to a KORA request made to the Clerk or the Secretary of State. These provisions would apply to all selections of a chairperson or members of the Supreme Court Nominating Commission that have not been canvassed, regardless of whether the selections are scheduled, upcoming, or pending as of the effective date of the bill.

#### *Applicability of KOMA and KORA*

The bill would deem the Supreme Court Nominating Commission and district judicial nominating commissions to be public bodies subject to KOMA. Further, the Supreme Court Nominating Commission and district judicial nominating commissions would be prohibited from recessing for any closed or executive meeting except for the purpose of discussing sensitive financial information contained within the personal financial records or official background check of a judicial nomination candidate. These provisions would not supersede a nominating commission's discretion to close a record or portion of a record pursuant to any applicable KORA exception.

The bill would amend the provision for filling a vacancy of the office of chairperson of the Supreme Court Nominating Commission or any of the lawyer members from the

congressional districts to allow the vacancy to be filled by the Governor instead of the Chief Justice of the Kansas Supreme Court. The appointment would have to be made within ten days after notice of the vacancy, would have to be made without regard to political affiliation of the appointee, and would have to be an attorney who is a resident of and licensed in Kansas.

The canvassers for any election of the chairperson or members of the Supreme Court Nominating Commission or any election of lawyer members of a district judicial nominating commission would be changed to include the Secretary of State and the Attorney General, or their designees, instead of two or more members of the bar residing in Kansas designated by the Chief Justice. The Clerk would remain a canvasser.

For elections of lawyer members of a district judicial nominating commission, the Clerk would be required to use the certified roster to ascertain eligibility for ballots or membership on the district judicial nominating commission. In such elections, a ballot not accompanied by the signed certificate of the voter would not be counted. The Clerk would be required to preserve the ballots for six months after the results are certified and to preserve the certificates for five years. Inspection of the ballots would be permitted only upon order by the Supreme Court. The Clerk would be required to destroy the ballots and certificates at the end of the preservation periods. For such elections, the Clerk would be required to provide the same list to the Secretary of State of persons returning a ballot with a signed certificate as for the Supreme Court Nominating Commission elections, and such lists and the certificates would be subject to KORA requests.

The bill would amend the statute governing the appointment of judges of the Court of Appeals to require the Governor (or the Chief Justice, if making an appointment because the Governor failed to make an appointment) to make each applicant's name and city of residence available

to the public once applications are no longer accepted, but not less than 10 days before making the appointment.

#### *Number of Nominees*

Finally, the bill would require the Supreme Court Nominating Commission to make nominations of three persons to fill a vacancy in the Supreme Court and certify the names of the nominees to the Governor. Further, the bill would change the number of nominees a district judicial nominating commission would be required to nominate for each vacancy from two or three to three, four, or five. The bill also would amend the section governing what occurs if there are not at least two qualified attorneys who reside in the judicial district willing to accept a nomination, to change two to three.

#### **Conference Committee Action**

The second Conference Committee agreed to the House amendments to House Sub. for SB 128, and agreed to add the contents of Sub. for SB 22 as recommended by Senate Committee on Judiciary, concerning municipal courts; and SB 197 as amended by Senate Committee of the Whole, concerning the filling of judicial vacancies. The portion of Sub. for SB 22 concerning municipal court docket fees, and the Kansas Commission on Peace Officers' Standards and Training Fund, which were originally proposed in HB 2553 were not included in this conference committee report, but were included in the conference committee report for HB 2696.

The second Conference Committee also reconciled amendments made to House Sub. for SB 128 by the House Committee of the Whole with amendments made to SB 197 by the Senate Committee of the Whole.

## **Background**

As introduced, SB 128 contained provisions concerning exceptions to the Kansas Open Records Act. The 2015 Legislature enacted these provisions in HB 2256.

The House Committee on Judiciary recommended a substitute bill replacing the original provisions of SB 128 with the language of HB 2652, regarding district judge vacancies. Further background regarding HB 2652 is provided below.

The House Committee of the Whole adopted an amendment requiring the commission to disclose the names of all persons whose nominations are accepted and providing that commission proceedings would be open to the public and could recess only for a closed or executive session in accordance with KORA.

### ***HB 2652 Background***

HB 2652 was introduced in the House Committee on Judiciary at the request of Representative Macheers. At the House Committee hearing, a representative of Kansans for Life appeared in support of the bill. No opponent or neutral testimony was offered.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration is unable to provide an estimate of savings or expenditures that may occur with the enactment of HB 2652.

### ***Sub. for SB 22 Background***

SB 22 was introduced by the Senate Committee on Judiciary at the request of the Kansas Judicial Council. As introduced, the bill contained the provisions regarding certified copies of expungements and notices of conviction, dismissal, or acquittal in municipal courts.

In the 2015 hearing before the Senate Committee on Judiciary, representatives of the Judicial Council and the Kansas Association of Criminal Defense Lawyers testified in support of the bill. There was no other testimony. The 2015 Senate Committee recommended the bill favorably. The bill subsequently was withdrawn from the Calendar and rereferred to the Senate Committee on Judiciary.

The 2016 Senate Committee on Judiciary recommended a substitute bill be passed. The substitute bill contains no substantive differences from the bill, as introduced, only updating language to reflect statutory changes made by 2015 legislation.

In the hearing before the House Committee on Judiciary, a representative of the Judicial Council testified in support of the bill. A representative of the League of Kansas Municipalities submitted written testimony supporting the bill. There was no neutral or opponent testimony.

The House Committee amended the bill to add the provisions of HB 2553, regarding municipal court docket fees, and the Kansas Commission on Peace Officers' Standards and Training Fund. [These provisions were not included in this conference committee report, however, they were included in the conference committee report for HB 2696.]

The fiscal note prepared by the Division of the Budget in 2015, indicates the bill would increase postage and nonjudicial staff time expenditures for the Judicial Branch in FY 2016, but an accurate estimate cannot be provided.

### ***SB 197 Background***

SB 197 was introduced by the Senate Committee on Judiciary at the request of Senator Lynn.

In the Senate Committee, the Executive Director of the Kansas Republican Party testified in support of the bill. The



Secretary of State and a law professor submitted written proponent testimony. A Court of Appeals judge testified in opposition to the bill. Representatives of the Kansas Bar Association, Kansas Association for Justice, and Kansas Association of Defense Counsel submitted written testimony opposing the bill.

The Senate Committee amended the bill to clarify that the Secretary of State and the Attorney General may designate someone to serve as a canvasser and to specify that a person appointed to fill a chairperson or lawyer vacancy on the Supreme Court Nominating Commission must be an attorney licensed and living in Kansas.

The Senate Committee of the Whole adopted amendments limiting the purpose for which a nominating commission may recess for a closed or executive meeting, clarifying that the KOMA provisions do not supersede a nominating commission's discretion in closing a record or portion of a record pursuant to any applicable KORA exception, and requiring the disclosure of the names and cities of residence of applicants for the Court of Appeals.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates the bill's provisions would increase annual Judicial Branch expenditures by a minimum of \$13,200 beginning in FY 2016. This cost could be somewhat reduced by the purchase of an online attorney registration system, but the Judicial Branch has not obtained current bids for such a system. Any fiscal effect is not reflected in The FY 2016 Governor's Budget Report.

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