

## House Concurrent Resolution No. 5012

By Committee on Judiciary

2-10

1 A PROPOSITION to amend section 5 of article 3 of the constitution of  
2 the state of Kansas; relating to justices of the supreme court and  
3 retention in office.

4  
5 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*  
6 *members elected (or appointed) and qualified to the House of*  
7 *Representatives and two-thirds of the members elected (or appointed)*  
8 *and qualified to the Senate concurring therein:*

9 Section 1. The following proposition to amend the constitution of  
10 the state of Kansas shall be submitted to the qualified electors of the state  
11 for their approval or rejection: Section 5 of article 3 of the constitution of  
12 the state of Kansas is hereby amended to read as follows:

13 "**§ 5. Selection of justices of the supreme court.** (a) (1) Any  
14 vacancy occurring in the office of any justice of the supreme court  
15 and any position to be open thereon as a result of enlargement of  
16 the court, or the retirement or failure of an incumbent to file ~~his~~  
17 *such justice's* declaration of candidacy to ~~succeed himself~~ *be*  
18 *retained in office* as hereinafter required, or failure of a justice to  
19 be elected to ~~succeed himself~~ *be retained in office*, shall be filled  
20 by appointment by the governor, *with the consent of the senate*, of  
21 one of three persons possessing the qualifications of office who  
22 shall be nominated and whose names shall be submitted to the  
23 governor by the ~~supreme court nominating commission established~~  
24 *standing house committee on judiciary, or the successor to such*  
25 *committee*, as hereinafter provided.

26 (2) *Whenever a vacancy occurs or will occur or a position*  
27 *opens on the supreme court, the clerk of the supreme court shall*  
28 *promptly give notice to the standing house committee on judiciary,*  
29 *or the successor to such committee.*

30 ~~(b)~~ (3) In event of the failure of the governor to make the  
31 appointment within ~~sixty~~ 60 days from the time the names of the  
32 nominees are submitted to ~~him~~ *the governor*, the chief justice of  
33 the supreme court shall make the appointment from such  
34 nominees, *with the consent of the senate.*

35 (b) *No person appointed pursuant to subsection (a) shall*  
36 *assume the office of justice of the supreme court until the senate,*

1 *by an affirmative vote of the majority of all members of the senate*  
 2 *then elected or appointed and qualified, consents to such*  
 3 *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 from the names submitted to the governor*  
 13 *by the standing house committee on judiciary, or the successor to*  
 14 *such committee, and such subsequent appointment shall be*  
 15 *considered by the senate in the same procedure as provided in this*  
 16 *article. The same appointment and consent procedure shall be*  
 17 *followed until a valid appointment has been made. No person who*  
 18 *has been previously appointed but did not receive the consent of*  
 19 *the senate shall be appointed again for the same vacancy. If the*  
 20 *senate fails to vote on an appointment within the time limitation*  
 21 *imposed by this subsection, the senate shall be deemed to have*  
 22 *given consent to such appointment.*

23 (c) Each justice of the supreme court appointed pursuant to  
 24 provisions of subsection (a) ~~of this section and consented to~~  
 25 ~~pursuant to subsection (b)~~ shall hold office for an initial term  
 26 ending on the second Monday in January following the first  
 27 general election that occurs after the expiration of ~~twelve~~ 12  
 28 months in office. Not less than ~~sixty~~ 60 days prior to the holding of  
 29 the general election next preceding the expiration of ~~his~~ *his such*  
 30 *justice's* term of office, ~~any~~ *the* justice of the supreme court may  
 31 file in the office of the secretary of state a declaration of candidacy  
 32 ~~for election to succeed himself~~ *retention in office*. If a declaration is  
 33 not so filed, the position held by such justice shall be open from the  
 34 expiration of ~~his~~ *his such justice's* term of office. If such declaration is  
 35 filed, ~~his~~ *his such justice's* name shall be submitted at the next general  
 36 election to the electors of the state on a separate judicial ballot,  
 37 without party designation, reading substantially as follows:

38 "Shall \_\_\_\_\_

39 (Here insert name of justice.)

40 \_\_\_\_\_  
 41 (Here insert the title of the court.)

42 be retained in office?"

43 If a majority of those voting on the question vote against

1 retaining ~~him~~ *the justice* in office, the position or office which ~~he~~  
2 *the justice* holds shall be open upon the expiration of ~~his~~ *such*  
3 *justice's* term of office;. Otherwise ~~he~~ *the justice* shall, unless  
4 removed for cause, remain in office for the regular term of six  
5 years from the second Monday in January following such election.  
6 At the expiration of each term ~~he~~ *the justice* shall, unless by law ~~he~~  
7 *the justice* is compelled to retire, be eligible for retention in office  
8 by election in the manner prescribed in this section.

9 (d) ~~A nonpartisan nominating commission whose duty it shall~~  
10 ~~be to~~ *The standing house committee on judiciary, or the successor*  
11 *to such committee, shall* nominate and submit to the governor the  
12 names of persons for appointment to fill vacancies in the office of  
13 any justice of the supreme court ~~is hereby established, and shall be~~  
14 ~~known as the "supreme court nominating commission."~~ Said  
15 ~~commission shall be organized as hereinafter provided.~~

16 (e) ~~The supreme court nominating commission shall be~~  
17 ~~composed as follows: One member, who shall be chairman, chosen~~  
18 ~~from among their number by the members of the bar who are~~  
19 ~~residents of and licensed in Kansas; one member from each~~  
20 ~~congressional district chosen from among their number by the~~  
21 ~~resident members of the bar in each such district; and one member,~~  
22 ~~who is not a lawyer, from each congressional district, appointed by~~  
23 ~~the governor from among the residents of each such district.~~

24 (f) ~~The terms of office, the procedure for selection and~~  
25 ~~certification of the members of the commission and provision for~~  
26 ~~their compensation or expenses shall be as provided by the~~  
27 ~~legislature.~~

28 (g) ~~No member of the supreme court nominating commission~~  
29 ~~shall, while he is a member, hold any other public office by~~  
30 ~~appointment or any official position in a political party or for six~~  
31 ~~months thereafter be eligible for nomination for the office of~~  
32 ~~justice of the supreme court. The commission committee may act~~  
33 ~~only by the concurrence of a majority of its members."~~

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

36 "*Explanatory statement.* The purpose of this amendment is to  
37 do away with the supreme court nominating commission,  
38 assign the commission's duties to the standing house  
39 committee on judiciary and make supreme court justice  
40 appointments subject to senate confirmation. The standing  
41 house committee on judiciary would submit the names of  
42 three persons to the governor and the governor would  
43 appoint one of such persons. A procedure is established

1           whereby senate confirmation would occur within 60 days of  
2           receiving the appointment. If the senate does not confirm the  
3           appointment by a majority vote, the governor would then  
4           appoint another qualified person from the names submitted  
5           to the governor by the standing house committee on  
6           judiciary, and such person's appointment would again go to  
7           the senate for confirmation. The same appointment and  
8           confirmation procedure would be followed until a valid  
9           appointment is made. If the senate fails to vote on an  
10          appointment within 60 days, it will be considered that the  
11          senate has confirmed the appointment.

12         "A vote for this proposition would change the procedure for  
13          selection of justices of the supreme court whereby the  
14          standing house committee on judiciary would nominate three  
15          persons for the office of justice of the supreme court, the  
16          governor would appoint one of such persons and the senate,  
17          by majority vote, would confirm the appointment.

18         "A vote against this proposition would continue in effect the  
19          current procedure for selection of justices of the supreme  
20          court whereby the supreme court nominating commission  
21          nominates three persons for the office of justice of the  
22          supreme court and the governor appoints one of such  
23          persons."

24         Sec. 3. This resolution, if approved by two-thirds of the members  
25          elected (or appointed) and qualified to the House of Representatives, and  
26          two-thirds of the members elected (or appointed) and qualified to the  
27          Senate shall be entered on the journals, together with the yeas and nays.  
28          The secretary of state shall cause this resolution to be published as  
29          provided by law and shall cause the proposed amendment to be submitted  
30          to the electors of the state at the general election in November in the year  
31          2016 unless a special election is called at a sooner date by concurrent  
32          resolution of the legislature, in which case it shall be submitted to the  
33          electors of the state at the special election.