

House Concurrent Resolution No. 5015

By Committee on Judiciary

2-17

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

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

"Article 3.—JUDICIAL

12
13 **"§ 1. Judicial power; seals; rules.** The judicial power of this
14 state shall be vested exclusively in one court of justice, which shall
15 be divided into one supreme court, one court of appeals, district
16 courts, and such other courts as are provided by law; and all courts
17 of record shall have a seal. The supreme court shall have general
18 administrative authority over all courts in this state.

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

35 **"§ 3. Jurisdiction and terms.** The supreme court shall have
36 original jurisdiction in proceedings in quo warranto, mandamus,

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

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

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

21 (2) In event of the failure of the governor to make the
22 appointment within 60 days from the time the names of the
23 nominees are submitted to the governor, the chief justice of the
24 supreme court shall make the appointment from such nominees,
25 with the consent of the senate.

26 (b) Whenever a vacancy occurs, will occur or position opens
27 on the supreme court, the clerk of the supreme court shall promptly
28 give notice to the governor.

29 (c) No person appointed pursuant to subsection (a) shall
30 assume the office of justice of the supreme court until the senate,
31 by an affirmative vote of the majority of all members of the senate
32 then elected or appointed and qualified, consents to such
33 appointment. The senate shall vote to consent to any such
34 appointment not later than 60 days after such appointment is
35 received by the senate. If the senate is not in session and will not
36 be in session within the 60-day time limitation, the senate shall
37 vote to consent to any such appointment not later than 20 days after
38 the senate begins its next session. In the event a majority of the
39 senate does not vote to consent to the appointment, the governor,
40 within 60 days after the senate vote on the previous appointee,
41 shall appoint another person possessing the qualifications of office,
42 whose name has been submitted to the governor by the supreme
43 court nominating commission, and such subsequent appointment

1 shall be considered by the senate in the same procedure as
2 provided in this article. The same appointment and consent
3 procedure shall be followed until a valid appointment has been
4 made. No person who has been previously appointed but did not
5 receive the consent of the senate shall be appointed again for the
6 same vacancy. If the senate fails to vote on an appointment within
7 the time limitation imposed by this subsection, the senate shall be
8 deemed to have given consent to such appointment.

9 (d) (1) Each justice of the supreme court appointed pursuant
10 to subsection (a) and consented to pursuant to subsection (c) shall
11 hold office for an initial term ending on the second Monday in
12 January following the first general election that occurs after the
13 expiration of 12 months in office.

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

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

34 (4) If a majority of those voting on the question vote against
35 the justice's retention, the secretary of state, following the final
36 canvass of votes on the question, shall certify the results to the
37 clerk of the supreme court. Any such justice who has not been
38 retained in office pursuant to this section shall not be eligible for
39 appointment to the office of justice of the supreme court prior to
40 the expiration of six years after the expiration of the justice's term
41 of office.

42 (e) A nonpartisan nominating commission whose duty it shall
43 be to nominate and submit to the governor the names of persons for

1 appointment to fill vacancies in the office of any justice of the
2 supreme court is hereby established, and shall be known as the
3 "supreme court nominating commission." Such commission shall
4 be organized as hereinafter provided.

5 (f) The supreme court nominating commission shall be
6 composed as follows: Five members appointed by the governor;
7 and one member from each congressional district chosen from
8 among their number by the resident members of the bar in each
9 such district. All members shall be residents of Kansas. At least
10 one member appointed by the governor shall be a member of the
11 bar in good standing and licensed in Kansas. The governor shall
12 designate one of the five members appointed by the governor to
13 serve as such commission's chairperson.

14 (g) The terms of office, the procedure for selection and
15 certification of the members of the commission and provision for
16 their compensation or expenses shall be as provided by the
17 legislature.

18 (h) No member of the supreme court nominating commission
19 shall, while a member, hold any other public office by appointment
20 or any official position in a political party or for six months
21 thereafter be eligible for nomination for the office of justice of the
22 supreme court.

23 (i) An affirmative vote of $\frac{2}{3}$ of the members of the supreme
24 court nominating commission shall be required to nominate and
25 submit the name of a person to the governor for the office of justice
26 of the supreme court or the office of judge of the court of appeals.

27 **"§ 6. Court of appeals.** (a) (1) The court of appeals shall
28 consist of 14 judges whose positions shall be numbered one to 14.
29 The court of appeals shall be a part of the court of justice in which
30 the judicial power of the state is vested by section 1 of this article
31 and shall be subject to the general administrative authority of the
32 supreme court. The court of appeals shall have such jurisdiction
33 over appeals in civil and criminal cases and from administrative
34 bodies and officers of the state as may be prescribed by law, and
35 shall have such original jurisdiction as may be necessary to the
36 complete determination of any cause on review. During the
37 pendency of any appeal, the court of appeals, on such terms as may
38 be just, may make an order suspending further proceedings in the
39 court below, until the decision of the court of appeals.

40 (2) Any vacancy occurring in the office of any judge of the
41 court of appeals and any position to be open on the court of appeals
42 as a result of enlargement of such court, or the retirement or failure
43 of an incumbent to file such judge's declaration of candidacy to be

1 retained in office as hereinafter required, or failure of a judge to be
2 elected to be retained in office, shall be filled by appointment by
3 the governor, with the consent of the senate, of one of three persons
4 possessing the qualifications of office who shall be nominated and
5 whose names shall be submitted to the governor by the supreme
6 court nominating commission established by section 5 of this
7 article.

8 (3) In event of the failure of the governor to make the
9 appointment within 60 days from the time the names of the
10 nominees are submitted to the governor, the chief justice of the
11 supreme court shall make the appointment from such nominees,
12 with the consent of the senate.

13 (b) Whenever a vacancy occurs, will occur or position opens
14 on the court of appeals, the clerk of the supreme court shall
15 promptly give notice to the governor.

16 (c) No person appointed pursuant to subsection (a) shall
17 assume the office of judge of the court of appeals until the senate,
18 by an affirmative vote of the majority of all members of the senate
19 then elected or appointed and qualified, consents to such
20 appointment. The senate shall vote to consent to any such
21 appointment not later than 60 days after such appointment is
22 received by the senate. If the senate is not in session and will not
23 be in session within the 60-day time limitation, the senate shall
24 vote to consent to any such appointment not later than 20 days after
25 the senate begins its next session. In the event a majority of the
26 senate does not vote to consent to the appointment, the governor,
27 within 60 days after the senate vote on the previous appointee,
28 shall appoint another person possessing the qualifications of office,
29 whose name has been submitted to the governor by the supreme
30 court nominating commission, and such subsequent appointment
31 shall be considered by the senate in the same procedure as
32 provided in this article. The same appointment and consent
33 procedure shall be followed until a valid appointment has been
34 made. No person who has been previously appointed but did not
35 receive the consent of the senate shall be appointed again for the
36 same vacancy. If the senate fails to vote on an appointment within
37 the time limitation imposed by this subsection, the senate shall be
38 deemed to have given consent to such appointment.

39 (d) (1) Each judge of the court of appeals appointed pursuant
40 to subsection (a) and consented to pursuant to subsection (c) shall
41 hold office for an initial term ending on the second Monday in
42 January following the first general election that occurs after the
43 expiration of 12 months in office.

1 (2) Not less than 60 days prior to the holding of the general
2 election next preceding the expiration of the term of any judge of
3 the court of appeals, the judge may file in the office of the
4 secretary of state a declaration of candidacy for retention in office.
5 If a declaration is not filed as provided in this section, the position
6 held by the judge shall be vacant upon the expiration of the judge's
7 term of office. If such declaration is filed, the judge's name shall be
8 submitted at the next general election to the electors of the state on
9 a separate judicial ballot, without party designation, reading
10 substantially as follows: "Shall (Here insert name of judge.), Judge
11 of the Court of Appeals, be retained in office?"

12 (3) If a majority of those voting on the question vote against
13 retaining the judge in office, the position which the judge holds
14 shall be vacant upon the expiration of the judge's term of office.
15 Otherwise, unless the judge is removed for cause, the judge shall
16 remain in office for the regular term of four years from the second
17 Monday in January following the election. At the expiration of
18 each term, unless by law the judge is compelled to retire, the judge
19 shall be eligible for retention in office by election in the manner
20 prescribed in this section.

21 (4) If a majority of those voting on the question vote against
22 the judge's retention, the secretary of state, following the final
23 canvass of votes on the question, shall certify the results to the
24 clerk of the supreme court. Any such judge who has not been
25 retained in office pursuant to this section shall not be eligible for
26 appointment to the office of judge of the court of appeals prior to
27 the expiration of four years after the expiration of the judge's term
28 of office.

29 (e) The supreme court may assign a judge of the court of
30 appeals to serve temporarily on the supreme court.

31 **"§ 7. District courts.** (a) The state shall be divided into
32 judicial districts as provided by law. Each judicial district shall
33 have at least one district judge. The term of office of each judge of
34 the district court shall be four years. District court shall be held at
35 such times and places as may be provided by law. The district
36 judges shall be elected by the electors of the respective judicial
37 districts unless the electors of a judicial district have adopted and
38 not subsequently rejected a method of nonpartisan selection. The
39 legislature shall provide a method of nonpartisan selection of
40 district judges and for the manner of submission and resubmission
41 thereof to the electors of a judicial district. A nonpartisan method
42 of selection of district judges may be adopted, and once adopted
43 may be rejected, only by a majority of electors of a judicial district

1 voting on the question at an election in which the proposition is
2 submitted. Whenever a vacancy occurs in the office of district
3 judge, it shall be filled by appointment by the governor until the
4 next general election that occurs more than 30 days after such
5 vacancy, or as may be provided by such nonpartisan method of
6 selection.

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

9 (c) The legislature shall provide for clerks of the district
10 courts.

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

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

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

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

20 **"§ 8. Qualifications of justices and judges.** Justices of the
21 supreme court, judges of the court of appeals and judges of the
22 district courts shall be at least 30 years of age and shall be duly
23 authorized by the supreme court of Kansas to practice law in the
24 courts of this state and shall possess such other qualifications as
25 may be prescribed by law.

26 **"§ 9. Prohibition of political activity by justices and
27 certain judges.** No justice of the supreme court who is appointed
28 under the procedure of section 5 of this article, nor any judge of the
29 court of appeals who is appointed under the procedure of section 6
30 of this article, nor any judge of the district court holding office
31 under a nonpartisan method authorized in subsection (a) of section
32 7 of this article, shall directly or indirectly make any contribution
33 to or hold any office in a political party or organization or take part
34 in any political campaign.

35 **"§ 10. Extension of terms until successor qualified.** All
36 judicial officers shall hold their offices until their successors shall
37 have qualified.

38 **"§ 11. Compensation of justices and judges; certain
39 limitation.** The justices of the supreme court, judges of the court of
40 appeals and judges of the district courts shall receive for their
41 services such compensation as may be provided by law, which
42 shall not be diminished during their terms of office, unless by
43 general law applicable to all salaried officers of the state. Such

1 justices or judges shall receive no fees or perquisites nor hold any
2 other office of profit or trust under the authority of the state, or the
3 United States except as may be provided by law, or practice law
4 during their continuance in office.

5 **"§ 12. Removal of justices and judges; retirement.** (a)

6 Justices of the supreme court may be removed from office by
7 impeachment and conviction as prescribed in article 2 of this
8 constitution. In addition to removal by impeachment and
9 conviction, justices may be retired after appropriate hearing, upon
10 certification to the governor, by the supreme court that such justice
11 is so incapacitated as to be unable to perform adequately such
12 justice's duties. Other judges shall be subject to retirement for
13 incapacity, and to discipline, suspension and removal for cause by
14 the supreme court after appropriate hearing.

15 (b) Any justice or judge upon reaching age 75 shall retire,
16 except that when any justice or judge attains the age of 75, such
17 justice or judge may, if such justice or judge desires, finish serving
18 the term during which such judge attains the age of 75.

19 **"§ 13. Savings clause.** Nothing contained in this amendment
20 to the constitution shall: (a) Shorten the term of office or abolish
21 the office of any justice of the supreme court, any judge of the
22 court of appeals, any judge of the district court, or any other judge
23 of any other court who is holding office at the time this amendment
24 becomes effective, or who is holding office at the time of adoption,
25 rejection, or resubmission of a nonpartisan method of selection of
26 district judges as provided in subsection (a) of section 7 of this
27 article, and all such justices and judges shall hold their respective
28 offices for the terms for which elected or appointed unless sooner
29 removed in the manner provided by law; (b) repeal any statute of
30 this state relating to the supreme court, the supreme court
31 nominating commission, the court of appeals, district courts, or any
32 other court, or relating to the justices or judges of such courts, and
33 such statutes shall remain in force and effect until amended or
34 repealed by the legislature."

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

37 *"Explanatory statement.* The purpose of this amendment is to
38 place the law concerning the court of appeals into the
39 constitution, to change the procedure for selecting supreme
40 court justices and court of appeals judges and to change the
41 membership of the nonpartisan supreme court nominating
42 commission. The gubernatorial appointments to the
43 nonpartisan supreme court nominating commission would be

1 increased from four members to five members. The
2 members of the bar would continue to elect four members of
3 the commission. The commission would continue to
4 nominate three persons for appointment by the governor, but
5 a $\frac{2}{3}$ majority vote would be required to submit any person's
6 name to the governor. The governor would appoint one of
7 such persons to the office of justice of the supreme court or
8 judge of the court of appeals, and such person's appointment
9 would be required to be consented to by the senate. A
10 procedure is established whereby senate consent would
11 occur within 30 days of receiving the appointment. If the
12 senate does not consent by a majority vote, the governor
13 would then select an appointment which would again go to
14 the senate for consent. The same appointment and consent
15 procedure would be followed until a valid appointment is
16 made. If the senate fails to vote on an appointment within 30
17 days, it will be considered that the senate has consented to
18 the appointment.

19 "A vote for this proposition would place the law concerning the
20 court of appeals into the constitution and provide a
21 procedure whereby a modified supreme court nominating
22 commission would nominate three qualified persons to the
23 governor for each vacant office of justice of the supreme
24 court or judge of the court of appeals. The governor or chief
25 justice would appoint one of such persons to the office of
26 justice of the supreme court or judge of the court of appeals
27 and the senate, by majority vote, would consent to the
28 appointment.

29 "A vote against this proposition would leave the law concerning
30 the court of appeals in the Kansas statutes and continue in
31 effect the current procedure whereby the governor appoints
32 judges of the court of appeals, with the consent of the senate.
33 It would also continue in effect the current procedure
34 whereby the supreme court nominating commission
35 nominates three persons for the office of justice of the
36 supreme court and the governor appoints one of such
37 persons, with no senate consent required."

38 Sec. 3. This resolution, if approved by two-thirds of the members
39 elected (or appointed) and qualified to the House of Representatives, and
40 two-thirds of the members elected (or appointed) and qualified to the
41 Senate shall be entered on the journals, together with the yeas and nays.
42 The secretary of state shall cause this resolution to be published as
43 provided by law and shall cause the proposed amendment to be submitted

- 1 to the electors of the state at the general election in November in the year
- 2 2016 unless a special election is called at a sooner date by concurrent
- 3 resolution of the legislature, in which case it shall be submitted to the
- 4 electors of the state at the special election.