

House Concurrent Resolution No. 5005

By Committee on Judiciary

1-20

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
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 a person possessing
18 the qualifications of office.

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

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

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

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

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

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

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

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

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

1 of office.

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

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

23 (3) Whenever a vacancy occurs, will occur or position opens
24 on the court of appeals, the clerk of the supreme court shall
25 promptly give notice to the governor.

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

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

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

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

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

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

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

41 (4) If a majority of those voting on the question vote against
42 the judge's retention, the secretary of state, following the final
43 canvass of votes on the question, shall certify the results to the

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

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

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

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

29 (c) The legislature shall provide for clerks of the district
30 courts.

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

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

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

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

40 **"§ 8. Qualifications of justices and judges.** Justices of the
41 supreme court, judges of the court of appeals and judges of the
42 district courts shall be at least 30 years of age and shall be duly
43 authorized by the supreme court of Kansas to practice law in the

1 courts of this state and shall possess such other qualifications as
2 may be prescribed by law.

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

12 **"§ 10. Extension of terms until successor qualified.** All
13 judicial officers shall hold their offices until their successors shall
14 have qualified.

15 **"§ 11. Compensation of justices and judges; certain**
16 **limitation.** The justices of the supreme court, judges of the court of
17 appeals and judges of the district courts shall receive for their
18 services such compensation as may be provided by law, which
19 shall not be diminished during their terms of office, unless by
20 general law applicable to all salaried officers of the state. Such
21 justices or judges shall receive no fees or perquisites nor hold any
22 other office of profit or trust under the authority of the state, or the
23 United States except as may be provided by law, or practice law
24 during their continuance in office.

25 **"§ 12. Removal of justices and judges.** Justices of the
26 supreme court may be removed from office by impeachment and
27 conviction as prescribed in article 2 of this constitution. In addition
28 to removal by impeachment and conviction, justices may be retired
29 after appropriate hearing, upon certification to the governor, by the
30 supreme court that such justice is so incapacitated as to be unable
31 to perform adequately such justice's duties. Other judges shall be
32 subject to retirement for incapacity, and to discipline, suspension
33 and removal for cause by the supreme court after appropriate
34 hearing.

35 **"§ 13. Savings clause.** Nothing contained in this amendment
36 to the constitution shall: (a) Shorten the term of office or abolish
37 the office of any justice of the supreme court, any judge of the
38 court of appeals, any judge of the district court, or any other judge
39 of any other court who is holding office at the time this amendment
40 becomes effective, or who is holding office at the time of adoption,
41 rejection, or resubmission of a nonpartisan method of selection of
42 district judges as provided in subsection (a) of section 7 of this
43 article, and all such justices and judges shall hold their respective

1 offices for the terms for which elected or appointed unless sooner
2 removed in the manner provided by law; (b) repeal any statute of
3 this state relating to the supreme court, the supreme court
4 nominating commission, the court of appeals, district courts, or any
5 other court, or relating to the justices or judges of such courts, and
6 such statutes shall remain in force and effect until amended or
7 repealed by the legislature."

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

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

27 "A vote for this proposition would provide a procedure whereby
28 the governor or chief justice would appoint a person to be a
29 supreme court justice or court of appeals judge and the
30 senate, by majority vote, would confirm the appointment of
31 the supreme court justice or court of appeals judge.

32 "A vote against this proposition would continue in effect the
33 current provision whereby the supreme court nominating
34 commission nominates three persons for the office of the
35 supreme court or court of appeals and the governor appoints
36 one of such persons."

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

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